SESSION 1932-33

[*The PROCEEDINGS, EVIDENCE, and RECORDS of the Joint Committee* [Session 1932-33] *will be found in the following Parliamentary papers of 1933* H L. 79 (I), (II A, B, C, and D), and (III), *or* H C 112 (I) (IIA, B, C, and D), and (III)]

SESSION 1933-34

VOLUME I

PART I

REPORT

PART II

PROCEEDINGS

† These discussions were held in private and the transcripts of them have been destroyed by order of the Joint Committee, with the exception of the preliminary discussion between the Joint Committee and the Delegates from Burma on the [illegible] and 17th December 1933, which was published in Record BI, (see page 115, Vol II, Records of the Joint Committee (Session 1933-34).)

(C1522)

VOLUME II

RECORDS

A1.

A2.

B1.

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* The Joint Committee decided to consider the Draft Report laid before them by the Lord in the Chair

† The Joint Committee decided to consider this alternative Part I (Paras. 1 to 42B) in lieu of the Introduction in the original Draft Report laid before them by the Lord in the Chair on 18 6 34

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Consultation on Irrigation and Forestry

	£	s.	d
The approximate cost of the Joint Committee during the session 1932–33 was	24,869	1	0
The approximate cost of the Joint Committee during the session 1933–34 was as follows —			
The cost of printing indexing and publishing the volumes is estimated by the Stationery Office at —			
Vol. I Part I	1,250	0	0
Vol. I Part II	835	0	0
Vol. II	490	0	0
The cost of repayment of the expenses of the Delegates from Burma was	1 178	0	0
The cost of printing draft reports and marshalled list of amendments was	425	0	0
The cost of the shorthand notes of the Discussions was	246	17	7
The cost of duplicating Confidential Memoranda, Circulars etc.	115	4	9
	£29 409	3	4

REPORT

BY THE SELECT COMMITTEE OF THE HOUSE OF LORDS APPOINTED TO JOIN WITH A COMMITTEE OF THE HOUSE OF COMMONS TO CONSIDER THE FUTURE GOVERNMENT OF INDIA AND, IN PARTICULAR, TO EXAMINE AND REPORT UPON THE PROPOSALS CONTAINED IN COMMAND PAPER 4268.

ORDERED TO REPORT.—

That this Committee was appointed at the commencement of the present Session

The Minutes of Evidence taken before, and Records reported from, the original Committee were referred to us For purposes of convenience this Report treats the present Committee as though it had been in existence since the appointment of the original Committee on the 11th April, 1933

We record with profound regret the death of two of our members, Lord Burnham and Miss Pickford, and we are deeply sensible of the loss which we have sustained by being deprived of the aid of their experience and judgment in the preparation of our Report.

We were empowered to call into consultation representatives of the Indian States and of British India, and we accordingly invited the following Delegates to attend our deliberations:—

Delegates from the Indian States

Rao Bahadur Sir V T. Krishnama Chari, C I E
Nawab Sir Liaqat Hyat-Khan, O B E
Nawab Sir Muhammad Akbar Hydari
Sir Mirza Muhammad Ismail, C I E , O B.E
Sir Manubhai Nandshanker Mehta, C S I
Sir Prabhashankar Dalpatram Pattani, K C I E
Mr Y Thombare

Delegates from Continental British India

His Highness the Right Honourable Sultan Sir Mohamad Shah, Aga Khan G.C.S.I. G.C.I.E. G.C.V.O.
Sir C. P. Ramaswami Aiyar, K.C.I.E.
Dr B. R. Ambedkar
Sir Hubert Carr
Mr A. H. Ghuznavi
Lieut.-Colonel Sir Henry Gidney
Sir Hari Singh Gour
Mr A. Rangaswami Iyengar
Mr M. R. Jayakar
Mr N. M. Joshi
Mr N. C. Kelkar
Begum Shah Nawaz.
Rao Bahadur Sir A. P. Patro
Sir Abdur Rahim.
The Right Honourable Sir Tej Bahadur Sapru K.C.S.I.
Sir Phiroze Sethna.
Dr Shafa'at Ahmad Khan.
Sardar Bahadur Buta Singh.
Sir Nripendra Nath Sircar
Sir Purshotamdas Thakurdas C.I.E. M.B.E.
Mr Zafrullah Khan.

Delegates from the Province of Burma

Sra Shwe Ba.
Mr C. H. Campagnac, M.B.E.
Mr N. M. Cowasji
U Kyaw Din.
Mr K. S. Harper
U Chit Hlaing
U Thein Maung
Dr Ba Maw
U Ba Pe.
Dr Ma Saw Sa.
U Shwe Tha.
Mr S. A. S. Tyabji.

All the above were able to attend with the exception of Mr Kelkar who was prevented by illness from coming to England. We have learned with very great regret of the death of Mr Rangaswami Iyengar since his return to India.

The Delegates took part in more than seventy of our meetings some of which were devoted to discussion between the Delegates and ourselves and others to the hearing of evidence.

We desire to place on record our appreciation of the assistance which we have derived from our full and frank discussions with the Delegates, for many of whom so long an absence from their own country must have caused great personal inconvenience and sacrifice. Their advice and co-operation have been of the greatest value to us Many of them have furnished us with separate memoranda on various points, but we would mention in particular the Joint Memorandum signed by all the British Indian Delegates who were still in England, which has been of great service to us as focussing British Indian views and to which we shall have occasion often to refer in the course of our Report

We have held 159 meetings in all and have examined over 120 witnesses, whose evidence has been printed in Volumes 2A, 2B and 2C of the Minutes of Evidence published in the autumn of 1933 We are much indebted to all the witnesses for the assistance which they gave us, but our special gratitude is due to the Secretary of State for India, who, though a member of the Committee, took the perhaps unprecedented course of tendering himself as a witness, and who replied to nearly 6,000 questions during the nineteen days over which his evidence extended. In no other way could we have been so effectively enabled to distinguish, and to examine in all their bearings, the intricate and difficult issues which we are charged to consider

We have also been fortunate in having at our disposal the practical knowledge of Indian affairs acquired by many of our own number from their personal experience in high office or in other work in India

REPORT OF THE JOINT SELECT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM

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SECTION I

THE PRINCIPLES OF A CONSTITUTIONAL SETTLEMENT

1 The conditions of the problem with the examination of which we have been entrusted are brilliantly described in the comprehensive survey which forms Volume I of the Report of the Statutory Commission We are not aware that the accuracy of this survey has been impeached, and we are content to take it both as the starting point and the text book of our own investigation Nor, indeed, could we do otherwise, for it would have been impossible for us in the time at our disposal to have accumulated and digested so vast a mass of fact and detail We desire to place on record our deep obligation to the work of the Commission and our conviction that, if we had not had before us the fruits of their patient and exhaustive enquiries, we should scarcely have found it possible to complete within any measurable space of time the task which Parliament has imposed upon us Nevertheless, if the labours of the Commission have happily relieved us of the task of restating by way of introduction the conditions of the Indian problem, there are certain elements in it which must so sensibly affect the judgment which we are invited to form and the recommendations which it will be our duty to make that we may be permitted briefly to refer to them

The Statutory Commission's survey

2 The sub-continent of India,[1] lying between the Himalayas and Cape Comorin, comprises an area of 1,570,000 square miles with a population now approaching 340,000,000 Of this area British India comprises about 820,000, and the Indian States 700,000, square miles, with populations of about 260,000,000 and 80,000,000 respectively It is inhabited by many races and tribes, speaking a dozen main languages and over two hundred minor dialects, and often as distinct from one another in origin, tradition and manner of life as are the nations of Europe Two-thirds of its inhabitants profess Hinduism in one form or another as their religion; over 77,000,000 are followers of Islam, and the difference between the two is not only one of religion in the stricter sense, but also of law and of culture They may be said indeed to represent two distinct and separate civilisations Hinduism is distinguished by the phenomenon of caste, which is the basis of its religious and social system and, save in a very restricted field, remains unaffected by contact with the philosophies of the West, the religion of Islam on the other hand is based upon the conception of the equality of man In addition to these two great communities, and to the Indian Christians now numbering some 6,000,000, there is also to be found an infinite variety of other religions and sects, ranging from the simple beliefs of Animism to the mystical speculations of the Buddhist The

The peoples of India

[1] *i e*, excluding Burma *see infra*, para 47

great majority of the people of India derive their living from the soil and practise for the most part a traditional and self sufficing type of agriculture The gross wealth of the country is very considerable but owing in large part to the vast and still rapidly growing number of its inhabitants the average standard of living is low and can scarcely be compared even with that of the more backward countries of Europe. Literacy is rare outside urban areas and even in these the number of literates bears but a small proportion to the total population.

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3 In its political structure India is divided between British India and the Indian States. The latter are nearly 600 in number They include 109 States among them great States like Hyderabad Mysore, Baroda, Kashmir Gwalior and Travancore, the Rulers of which are entitled to a seat in the Chamber of Princes (though in point of fact not all of these six have been continuously and some have never been represented, and none of them has taken an active part in the work of the Chamber since 1933) 126 which are represented in the Chamber by 12 of their own order elected by themselves and some 300 Estates Jagirs and others which are only States in the sense that their territory sometimes consisting only of a few acres does not form part of British India. The more important States enjoy within their own territories all the principal attributes of sovereignty but their external relations are in the hands of the Paramount Power The sovereignty of others is of a more restricted kind and over others again the Paramount Power exercises in varying degrees an administrative control

4 British India consists of nine Governors Provinces (excluding Burma) together with certain other areas administered under the Government of India itself The Governors Provinces possess a considerable measure of executive and legislative independence but over all of them the Government of India and the Central Legislature can exercise executive and legislative authority In respect of certain matters known as transferred subjects the Provincial Executives are responsible to their Legislatures but the Governor-General in Council is independent of the Central Legislature and responsible only to the Secretary of State and through him to Parliament and the same is true of the Governors in Council in relation to the reserved subjects in the Provinces An official *bloc* forms part of both the Central and Provincial Legislatures and in general acts in accordance with the wishes of the Governor-General and Provincial Governors respectively British India is administered through a number of services some of them all India services and some provincial.

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5 Such in the barest outline is the present constitutional structure of British India, into the details of which we shall have occasion to enter with more particularity when we deal with the specific proposals of the White Paper in their order It will be seen that its main features are a Central Executive responsible only to the Secretary of State and through him to Parliament Provincial

Executives exercising powers over a wide field, responsible in certain matters but not in others to the Provincial Legislatures, and Central and Provincial Legislatures exercising the law-making power, but with no constitutional control over the Executive in one case and with only a limited control in the other Yet notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice, and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India

The Br Achiev ment

6 The record of British rule in India is well known Though we claim for it neither infallibility nor perfection, since, like all systems of government, it has, at times, fallen into error, it is well to remember the greatness of its achievement It has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-Continent, it has barred the way against the foreign invader and has maintained tranquillity at home, it has established the rule of law, and, by the creation of a just administration and an upright judiciary, it has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for his own use the fruit of his labours The ultimate agency in achieving these results has been the power wielded by Parliament The British element in the administrative and judicial services has always been numerically small The total European population of British India to-day, including some 60,000 British troops, is only 135,000 The total British element in the Superior Services is about 3,150, and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police

The Mo Empire

7. The success of British rule cannot be justly estimated without reference to the condition of things which preceded it The arts of government and administration were not indeed unknown to the earlier Hindu kings, and the strong hand of the Mogul Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe But the strength of the Mogul Empire depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed, nor during its most magnificent period was its authority unchallenged either within or without its borders Its system of government resembled that of other Asiatic despotisms The interests of the subject races were made subservient to the ambitions, and often to the caprices, of the monarch, for the politic toleration of Akbar and his immediate successors disappeared with Aurungzeb The imperial splendour became

the measure of the people s poverty and their sufferings are said by a French observer long resident at the Court of Aurungzeb to have been beyond the power of words to describe.

The post Mogul period.

8 There are pages in the history of India between the collapse of the Mogul Empire and the final establishment of British supremacy which even to-day cannot be read without horror With but brief intervals of relief vast tracts were given over to the internecine struggles of the princes the guerilla warfare of petty chiefs and the exactions of Indian and European adventurers and to townsmen and peasants alike the helpless victims of malice domestic, foreign levy and anarchy it might have seemed that the sum of human misery was complete. It is in the improvement which has taken place in Indian agriculture since the establishment of peace and security that the Royal Commission in 1928 found a measure of the extent to which husbandry had been injured and its progress delayed by the long period of disorder and unrest that preceded the establishment of the unity of India under the British Crown

Restoration of peace and order

9 Such were the conditions out of which British rule gradually with the aid and co-operation of many Indians created a new and stable polity Peace and order were re-established the relations of the Indian States with the Crown were finally determined and the rule of law made effective throughout the whole of British India. On this solid foundation the majestic structure of the Government of India rests and it can be claimed with certainty that in the period which has elapsed since 1858 when the Crown assumed supremacy over all the territories of the East India Company the educational and material progress of India has been greater than it was ever within her power to achieve during any other period of her long and chequered history At the same time the surveys and settlement of the land including the recognition and determination by law of land tenures and the just assessment of the land revenue together with the preparation and revision from time to time of the record of rights and customs have afforded guarantees of security to the vast agricultural population upon which has depended the welfare of the whole sub-continent

Influence of British constitutional ideas

10 We have emphasized the magnitude of the British achievement in India because it is this very achievement that has created the problem which we have been commissioned by Parliament to consider By transforming British India into a single unitary State it has engendered among Indians a sense of political unity By giving that State a Government disinterested enough to play the part of an impartial arbiter and powerful enough to control the disruptive forces generated by religious racial and linguistic divisions it has fostered the first beginning at least of a sense of nationality transcending those divisions. By establishing conditions

in which the performance of the fundamental functions of government, the enforcement of law and order and the maintenance of an upright administration, has come to be too easily accepted as a matter of course, it has set Indians free to turn their mind to other things, and in particular to the broader political and economic interests of their country Finally by directing their attention towards the object lessons of British constitutional history and by accustoming the Indian student of government to express his political ideas in the English language, it has favoured the growth of a body of opinion inspired by two familiar British conceptions; that good government is not an acceptable substitute for self-government, and that the only form of self-government worthy of the name is government through Ministers responsible to an elected Legislature

Reality of Indian political aspirations.

11 The Indian problem cannot be understood unless the reality of these political aspirations is frankly recognised at the outset There is ample evidence that enlightened Indian opinion has a very just appreciation of the benefits derived from the British connection, but the attachment of a people to its government is not always determined by a dispassionate calculation of material interest, still less by sentiments of mere gratitude The subtle ferments of education, the impact of the War, and the beginnings of that sense of nationality to which we have referred, have combined to create a public opinion in India which it would be a profound error for Parliament to ignore It is true, of course, that those who entertain these aspirations constitute but a small fraction of the vast population of India and that, in these circumstances, alleged manifestations of public opinion are often of doubtful value Nevertheless, a public opinion does exist, strong enough to affect what has been for generations the main strength of the Government of India —its instinctive acceptance by the mass of the Indian people To the cultivators who make up nine-tenths of the population, an equitable land revenue settlement and the timely advent of the monsoon may be of more importance than any projects of constitutional reform, but, when they find that neither just administration nor good monsoons can ensure a remunerative price for their produce, their lack of political ideas may make them more, rather than less, susceptible to political agitation History has repeatedly shown the unwisdom of judging the political consciousness of a people by the standard of its least instructed class, and the creation of the British Empire, as we know it to-day, has been mainly due to the fact that, for the last hundred and fifty years, British policy has been guided by a more generous appreciation of the value, and a juster estimate of the influence, of what is sometimes called a politically-minded class

The Preamble to the Act of 1919

12 British policy has certainly been so guided in India, notably during recent years It has conferred on the people of India, by the Act of 1919, wide powers of self-government

during the last six or seven years from the appointment of the Statutory Commission onwards it has been consistently directed to working out in free collaboration with Indians themselves the lines of a new and more permanent Constitution. In particular for the first time in the history of India representatives of her Princes and peoples have sat for many months in counsel with representatives of His Majesty s Government and of the great political parties of the United Kingdom and for the first time in the history of Parliament Indian delegates have taken part in the proceedings of a Joint Select Committee and have illuminated our discussions even if circumstances forbade them to share our responsibilities But above all in the Preamble to the Act of 1919 Parliament has set out finally and definitely the ultimate aims of British rule in India Subsequent statements of policy have added nothing to the substance of this declaration and we think it well to quote it here in full as settling once and for all the attitude of the British Parliament and people towards the political aspirations of which we have spoken —

> Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the empire
>
> And whereas progress in giving effect to this policy can only be achieved by successive stages and it is expedient that substantial steps in this direction should now be taken
>
> And whereas the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples
>
> And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred and by *the extent to which it is found that confidence can be reposed* in their sense of responsibility
>
> And whereas concurrently with the gradual development of self governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities

nstitu nal ry and ictice

13 But a recognition of Indian aspirations while it is the necessary preface to any study of Indian constitutional problems is an insufficient guide to their solution Responsible government to which those aspirations are mainly directed to-day is not an automatic device which can be manufactured to specification It is not even a machine which will run on a motive power of its own The student of government who assumes that British constitutional

theory can be applied at will in any country misses the fact that it could not be successfully applied even in Great Britain if it were not modified in a hundred ways by unwritten laws and tacit conventions It is not unnatural that, in the words of the Statutory Commission, most of the constitutional schemes propounded by Indians should closely follow the British model, but the successful working of that model postulates the existence of certain conditions, which are as essential as they are difficult to define As Lord Bryce has remarked, " the English Constitution, which we admire as a masterpiece of delicate equipoises and complicated mechanism, would anywhere but in England be full of difficulties and dangers It works by a body of understanding which no writer can formulate and of habits which centuries have been needed to instil " It is superfluous to adduce examples, but two of the most important may be cited, the powers of the Prime Minister and the position of the Civil Service Of the first Mr. Gladstone said that " nowhere in the world does so great a substance cast so small a shadow ", of the second Professor Lowell has pointed out that both the civil servant's abstinence from politics and his permanence of tenure have been " secured by the force of public opinion hardening into tradition, and not by the sanction of law " Above all, the understanding and habits of which Lord Bryce speaks are bound up with the growth of mutual confidence between the great parties in the State transcending the political differences of the hour Experience has shown only too clearly that a technique which the British people have thus painfully developed in the course of many generations is not to be acquired by other communities in the twinkling of an eye, nor, when acquired, is it likely to take the same form as in Great Britain, but rather to be moulded in its course of development by social conditions and national aptitudes.

Difference between the letter and spirit of British Constitutional doctrine

14 Experience has shown, too, how easily the framers of written constitutions may be misled by deceptive analogies, succeeding only in reproducing what they suppose to be the letter of British constitutional theory, while ignoring the spirit and the living growth of British constitutional practice The classic instance of such misconceptions is offered by the Constitution of the United States, whose authors decided " to keep the legislative branch absolutely distinct from the executive branch," largely because " they believed such a separation to exist in the English, which the wisest of them thought the best, Constitution "[1] That error may seem absurd enough to modern students of politics, but the mere copyist of British institutions would fall into even more dangerous errors to-day if he were to assume that an Act of Parliament can establish similar institutions in India merely by reproducing such provisions as are to be found in the constitutional law of the United Kingdom It is certain, on the contrary, as we shall show, that such an Act must

[1] Bagehot. *The British Constitution*

seek to give statutory form to many safeguards which are essential to the proper working of parliamentary government but which in Great Britain have no sanction save that of established custom and when this is done it will remain true that parliamentary government in India may well develop on lines different from those of government at Westminster

Constitutional development should be evolutionary

15 If then, the long collaboration of Englishmen and Indians during recent years is to result in the enactment of a Constitution which will work successfully under Indian conditions we shall do well to discard theories and analogies and instead to base our scheme on the government of India as it exists to-day That was the line of approach which was adopted by the Statutory Commission and has increasingly been followed in the deliberations of the Round Table Conferences and in our own consultations with the Indian delegates It is also the line which Parliament has followed in the past in framing the Constitutions of the self governing Dominions If the Constitutions of Canada Australia New Zealand and South Africa were framed on the British model it was not because Parliament decided on theoretical grounds to reproduce that model in those countries but because government in those countries had been long conducted on British principles and had already grown into general conformity with British practice If these Constitutions enacted over a period of more than forty years differ from one another in certain points those differences are not to be attributed to changes in British constitutional theory so much as to variations in the experience and practice of the particular communities themselves In India too there is already a system of government which while possessing many special characteristics is no less based on British principles and is no less a living organism Already long before either the Morley Minto or the Montagu Chelmsford reforms that government had shown a marked tendency to develop on certain lines The safest hypothesis on which we can proceed and the one most in accordance with our constitutional history is that the future government of India will be successful in proportion as it represents not a new creation substituted for an old one but the natural evolution of an existing government and the natural extension of its past tendencies

Provincial Autonomy a natural development

16 It is from this point of view that Parliament may well approach the first and basic proposal which has been submitted to us the proposal to found the new constitutional system in India on the principle of Provincial Autonomy That proposal has been so fully considered and so precisely formulated by the Statutory Commission that we do not propose to discuss its details in this introductory part of our Report It is however important to observe that far reaching as is this constitutional change it is not a break with the past Every student of Indian problems whatever his prepossessions from the Joint Select Committee of

1919 to the Statutory Commission, and from the Statutory Commission onwards, has been driven in the direction of Provincial Autonomy, not by any abstract love of decentralisation, but by the inexorable force of facts Moreover, the same facts had already set the Government of India moving in the same direction, long before the emergence of the constitutional problem in its present form When that problem did emerge, a long and steady process of administrative devolution from the Government of India to the Provincial Governments had already profoundly affected the whole structure of Indian administration In particular, this gradual course of devolution had produced three important results It had tended to remove provincial administration from the immediate purview of His Majesty's Government and, by thus weakening the direct accountability of Indian administrators to Parliament, it had, perhaps, rendered inevitable the introduction, in some degree, of local responsible government At the same time, it had tended to make the Provinces the centres of the development of social services, and it had also tended to transfer to the Provincial Executives the prime responsibility for the preservation of law and order From these three changes the three main features of Provincial Autonomy are directly derived

Abolition of dyarchy approved.

17. In the first place, the Act of 1919 introduced a large measure of responsible government in the Provinces, and the governments thus established have now been in operation for more than a decade Opinions may differ widely as to the success of this experiment, but we agree with the conclusion reached by the Statutory Commission, that its development has now reached a stage when it has outgrown the limits imposed upon it by the Act of 1919 The present dyarchic system in the Provinces was designed to develop a sense of responsibility and it has in fact given a considerable number of public men experience of the responsibilities of government, either as Ministers or Executive Councillors, or as members of the majority on which Ministers have relied for support in the Legislatures On the other hand, the dyarchic system has sometimes tended to encourage a wholly different attitude A sense of responsibility is an attribute of character born of experience, not a garment to be put on or discarded at will, according to the particular social function which the wearer may be attending at the moment The Statutory Commission rightly observes that it can only be acquired by making men responsible politically for the effects of their own actions; and their sense of responsibility must be enormously weakened if the government functions in watertight compartments, partitioned off by the clauses of a Constitution Hence the recommendation of the Statutory Commission, which we endorse, that the dyarchic system should be abolished, and that Provincial Ministers should be made generally responsible over the whole field of Provincial government,

Responsible government and social legislation.

18 Secondly in the sphere of social administration it is evident that a point has been reached where further progress depends upon the assumption by Indians of real responsibility for Indian social conditions Englishmen may legitimately claim that for the greater part of her progress India has been mainly indebted to British rule. But from one aspect of Indian life British rule has tended to stand aside it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. This attitude of non interference has not, indeed prevented the Government of India from introducing reforms in many matters to use Lord Lansdowne s words where demands preferred in the name of religion would lead to practices inconsistent with individual safety and the public peace and condemned by every system of law and morality in the world' Yet it must be recognised that in a country where the habits and customs of the people are so closely bound up with their religious beliefs this attitude however justifiable it may have been has sometimes had the result of making it difficult for the Government to carry into effect social legislation in such matters (to name only two obvious instances) as child marriage and the problem of the untouchables It has become increasingly evident in recent years that the obstacles to such legislation can only be removed by Indian hands We are under no illusion as to the difficulty of that task but we are clear that under responsible government alone can it be attempted with any prospect of success

Responsible government and the enforcement of law and order

19 But the third aspect of Provincial Autonomy is still as it has been from time immemorial the most difficult and the most important Among the many problems arising out of the process of devolution the most vital one is how best to ensure the continuity of the Provincial Executives in the performance of what in an earlier paragraph we referred to as the fundamental functions of government the enforcement of law and order and the maintenance of an upright administration Because these are the fundamental functions of government and because there is no greater danger to good government than the tendency to take their performance for granted we have come as will later appear to the same conclusion as the Statutory Commission that Provincial Ministers must be made responsible for their performance But it is well to remember what according to British constitutional practice is the nature of that responsibility It is a responsibility which no Executive can share with any Legislature however answerable it may be to that Legislature for the manner of its discharge That has been true of the relationship of the Government of India to Parliament in the past it must remain true of the relationship of Provincial Ministers to Provincial Legislatures in the future In the special circumstances of India it is appropriate that this principle of executive independence should be reinforced in the Constitution by the conferment of special powers and responsibilities on the Governor as the head of the Provincial Executive This raises a wider question on which a further word must be said

British conception of parliamentary government.

20 In establishing, or extending, parliamentary government in the Provinces, Parliament must take into account the facts of Indian life. It must give full weight, indeed, to the testimony of the Statutory Commission that, in spite of the disadvantages of dyarchy on which the Commission laid such stress, Indians have shown, since 1921, a marked capacity for the orderly conduct of parliamentary business, a capacity which has grown steadily with the growth of their experience. We cannot doubt that this apprenticeship in parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with the affairs of government and by stimulating the growth of a public conscience amongst the educated classes as a whole. But other facts must also be frankly recognized. Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel. In India none of these factors can be said to exist to-day. There are no parties, as we understand them, and there is no considerable body of political opinion which can be described as mobile. In their place we are confronted with the age-old antagonism of Hindu and Muhammadan, representatives not only of two religions but of two civilisations; with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another; and with the rigid divisions of caste, itself inconsistent with democratic principle. In these circumstances, communal representation must be accepted as inevitable at the present time, but it is a strange commentary on some of the democratic professions to which we have listened. We lay stress on these facts because in truth they are of the essence of the problem and we should be doing no good service to India by glozing them over. These difficulties must be faced, not only by Parliament, but by Indians themselves. It is impossible to predict whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social policies, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life. Meanwhile it must be recognised that, if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps irreparable. In these circumstances, the successful working of parliamentary government in the Provinces

must depend in a special degree on the extent to which Parliament can *translate the customs* of the British Constitution into statutory safeguards

Nature and objects of safeguards.

21 That word like other words repeatedly used in recent discussions has become a focus of misunderstandings both in England and India. To many Englishmen it conveys the idea of an ineffective rearguard action masking a position already evacuated to many Indians it seems to imply a selfish reservation of powers inconsistent with any real measure of responsible government Since it is too late to invent a new terminology we must make it clear that we use the word in a more precise and quite different sense On the one hand the safeguards we contemplate have nothing in common with those mere paper declarations which have been sometimes inserted in constitutional documents and are dependent for their validity on the goodwill or the timidity of those to whom the real substance of power has been transferred They represent on the contrary (to quote a very imperfect but significant analogy) a retention of power as substantial and as fully endorsed by the law as that vested by the Constitution of the United States in the President as Commander in Chief of the Army—but more extensive both in respect of their scope and in respect of the circumstances in which they can be brought into play On the other hand they are not only not inconsistent with some form of responsible government but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it without which it could have little or no hope of success It is in exact proportion as Indians show themselves to be not only capable of taking and exercising responsibility but able to supply the missing factors in Indian political life of which we have spoken that both the need for safeguards and their use will disappear We propose to examine later in this Report the nature of the safeguards required but we think it right to formulate here what seem to us to be the essential elements in the new constitutional settlement which these safeguards should be designed to supply

Need for flexibility

22. The first is flexibility so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration in the constitutional framework itself The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919 but we are also impressed with the advantage of giving full scope for the development in India of that indefinable body of understanding of political instinct and of tradition which Lord Bryce in the passage which we have quoted postulates as essential to the working of our own Constitution The success of a Constitution depends indeed far more upon the manner and spirit in which it is worked than upon its formal provisions. It is impossible to foresee so strange and perplexing are the conditions of the problem the exact lines which constitutional development will eventually follow, and it is therefore the more desirable that those upon whom responsibility will rest

should have all reasonable scope for working out their own salvation by the method of trial and error. In other words, as the Statutory Commission emphasised in their Report, the new Indian Constitution must contain within itself the seeds of growth

for a strong Executive,

23 Next, there is the necessity for securing strong Executives in the Provinces We have little to add to what the Statutory Commission have written on this point, and in our judgment they do not exaggerate when they say that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for hesitation and weakness greater We do not doubt that Indian Ministers, like others before them, will realise this truth, but, in view of the parliamentary weaknesses which we have pointed out, the risk of divided counsels and therefore of feebleness in action is not one which can be ignored We have no wish to underrate the legislative function, but in India the executive function is, in our judgment, of overriding importance In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures, and the threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same complexion as the old We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail in the body of our Report. Here, we content ourselves with saying that there must be (to quote again the Statutory Commission) an executive power in each Province which can step in and save the situation before it is too late This power must be vested in the Governor, and so strongly have we been impressed by the need for this power, and by the importance of ensuring that the Governor shall be able to exercise it promptly and effectively, that, among other alterations in the White Paper, we have felt obliged to make a number of additional recommendations in regard to the Governor's sources of information, the protection of the police, and the enforcement of law and order

for an efficient administration,

24 But, further, a strong Executive is impossible and the power thus vested in the Governor would be useless, in the absence of a pure and efficient administration, the backbone of all good government The establishment of a strong and impartial public service is not the least of the benefits which British rule has given to India, and it is perhaps the most prized In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration, and it is indeed literally true, as the Statutory Commission observe, that the life of millions of the population depends on the existence of a thoroughly efficient administrative system But no service can be efficient if it has cause for anxiety or discontent It is therefore essential that those whose duty it is to work this system should be freed from anxiety as to their status and prospects under the new Constitution, and that new entrants should not be discouraged by any apprehension of

inequitable treatment We have every hope that such anxieties or apprehensions will prove unfounded but they may be none the less real on that account and so long as they exist it is necessary that all reasonable measures should be taken to remove them

and for an impartial authority to hold scales evenly between conflicting interests.

25 Lastly there must be an authority in India armed with adequate powers able to hold the scales evenly between conflicting interests and to protect those who have neither the influence nor the ability to protect themselves Such an authority will be as necessary in the future as experience has proved it to be in the past Under the new system of Provincial Autonomy it will be an authority held as it were in reserve but those upon whom it is conferred must at all times be able to intervene promptly and effectively if the responsible Ministers and the Legislatures should fail in their duty This power of intervention must generally speaking be vested primarily in the Provincial Governors but their authority must be closely linked with and must be focussed in a similar authority vested in the Governor-General as responsible to the Crown and Parliament for the peace and tranquillity of India as a whole and for the protection of all the weak and helpless among her people This leads us naturally to a consideration of the next point in the Indian constitutional problem—the form and character of the Central Government

Provincial Autonomy requires a re-adjustment at Centre

26 If the establishment of Provincial Autonomy marks not so much a new departure as the next stage in a path which India has long been treading it is the more necessary that on entering this stage we should pause to take stock of the direction in which we have been moving We have spoken of unity as perhaps the greatest gift which British rule has conferred on India but in transferring so many of the powers of government to the Provinces and in encouraging them to develop a vigorous and independent political life of their own we have been running the inevitable risk of weakening or even destroying that unity Provincial Autonomy is in fact an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together In other words the necessary consequence of Provincial Autonomy in British India is a British India Federal Assembly In recent discussions the word federation has become identified with the proposals for an All India Federation and for the establishment in the common phrase of responsibility at the Centre both of which proposals we shall have to discuss in a moment But federation is of course simply the method by which a number of governments autonomous in their own sphere are combined in a single State A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its members indeed as we shall show later the central government of a purely British India Federation could not in our opinion be appropriately framed

on this model. But a Federal Legislature must be constituted on different lines from the Central Legislature of a unitary State. The Statutory Commission realised this truth and proposed a new form of Legislature at the Centre, specifically designed to secure the essential unity of British India We have devoted particular attention to the form of the Central Legislature and shall have to recommend the substitution of an alternative scheme for the White Paper proposals.

Necessity for guarding against centrifugal tendencies

27. Of course, in thus converting a unitary State into a Federation, we should be taking a step for which there is no exact historical precedent Federations have commonly resulted from an agreement between independent or, at least, autonomous governments, surrendering a defined part of their sovereignty or autonomy to a new central organism. At the present moment, the British-Indian Provinces are not even autonomous, for they are subject to both the administrative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor-General in Council We are faced, therefore, with the necessity of creating autonomous units and combining them into a federation by one and the same act But it is obvious that we have no alternative. To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal forces of Provincial Autonomy without any attempt to counteract them and to ensure the continued unity of India We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks If Parliament should decide to create an All-India Federation, the actual establishment of the new Central Legislature may without danger be deferred for so long as may be necessary to complete arrangements for bringing the representatives of the States into it; but the form of that Legislature must be defined in the Constitution Act itself

The Indian States and an All-India Federation

28 This brings us to the further proposal laid before us, that the Constitution Act should also determine the conditions upon which an All-India Federation is to be established, which includes the Indian States. This is a separate operation, which may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried out by different methods and raises quite distinct issues of policy We will leave questions of method to be considered in the body of our Report, but the issues of policy must be briefly discussed here

Difficulties of a Federation composed of disparate units

29 The Statutory Commission looked forward to the ultimate establishment of a Federation of Indian States and Provinces, and they recommended that, until this ideal could be realised, policies affecting British India and the States should be discussed between the parties in a consultative, but not legislative, Council of Greater India, consisting of representatives drawn from the States and the

British Indian Legislature. The Commission did not anticipate that the Princes would be willing to enter an All India Federation without some preliminary experience of joint deliberation on matters of common concern and no doubt the Commission saw in this procedure the means of overcoming by a process of trial and error the difficulties of establishing an All India Federation. These difficulties are obvious and again they are quite distinct from the difficulties involved in the constitution of a British-India Federation The main difficulties are two that the Indian States are wholly different in status and character from the Provinces of British India, and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces On the first point the Indian States unlike the British India Provinces possess sovereignty in various degrees and they are broadly speaking under a system of personal government Their accession to a Federation cannot therefore take place otherwise than by the voluntary act of the Ruler of each State and after accession the representatives of the acceding State in the Federal Legislature will be nominated by the Ruler and its subjects will continue to owe allegiance to him. On the second point the Rulers have made it clear that, while they are willing to consider federation now with the Provinces of British India on certain terms they could not as sovereign States agree to the exercise by a Federal Government in relation to them of a range of powers identical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly a Federation composed of disparate constituent units in which the powers and authority of the Central Government will differ as between one constituent unit and another

Unity of India endangered without a constitutional relationship between States and British India.

30 Against these undoubted difficulties we have to place one great consideration of substance which appears to us to outweigh *the disadvantages of these anomalies The unity of India on which* we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India It is this fact surely that has influenced the Rulers of the Indian States in their recent policy They remain perfectly free to continue if they so choose in the political isolation which has characterized their history since the establishment of the British connection But they have it appears become keenly conscious of the imperfections of the Indian polity as it exists to-day A completely united Indian polity cannot it is true be established either now or so far as human foresight can extend at any time In most respects the anomalies to which we have referred are the necessary incidents not merely of the introduction of an All India Federation at this moment but of its introduction at any time in the future So far as we are aware no section of opinion in this country or in British India is prepared to forego an All India Federation as an ultimate aim of British policy Certainly the Statutory Commission was not prepared to do so and it is the ideal

indicated in their report which has since won so much support among the Indian Princes The question for decision is whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer added strength, stability and prosperity on India as a whole—that is to say, both on the States and on British India. To this question, there can, we think, be only one answer, an affirmative one, and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to the people of this country From their point of view it is evident enough that Ruling Princes who in the past have been the firm friends of British rule have sometimes felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and Peoples Ruling Princes, however, as members of a Federation, may be expected to give steadfast support to a strong and stable Central Government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticise or even obstruct But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

Economic ties between States and British India.

31. The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not precluded by the terms of the Crown's treaties with some States Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-Continent On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct the flow of trade Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British-India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India Even where the Government of India has adequate powers to impose internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction and has often left behind it, in the States, a sense of injustice Moreover, a common company law for India, a common

banking law a common body of legislation on copyright and trade-marks a common system of communications are alike impossible Conditions such as these which have caused trouble and uneasiness in the past are already becoming and must in the future increasingly become intolerable as industrial and commercial development spreads from British India to the States On all these points the Federation now contemplated would have power to adopt a common policy That common policy would be subject no doubt to some reservation of special treaty rights by certain States and in the States generally its enforcement would in many respects rest with officers appointed by the State Rulers but even so modified it would mark a long step from confusion towards order The rights of the States to impose internal customs duties cannot be abolished but as we shall indicate[1] later moderation in the use of them can be made a condition of federation In these times when experience is daily proving the need for the close co-ordination of policies we cannot believe that Parliament while introducing a new measure of decentralisation in British India, would be wise to neglect the opportunity now offered to it of establishing a new centre of common action for India as a whole

The States and responsibility at the Centre

32. An All India Federation thus presents solid advantages from the point of view alike of His Majesty's Government of British India and of the Indian States But the attraction of the idea to the States clearly depends on the fulfilment of one condition that in acceding to the Federation they should be assured of a real voice in the determination of its policy The Princes have therefore stated clearly in their declaration that they are willing now to enter an All India Federation but only if the Federal Government is a responsible and not an irresponsible government This brings us to the last of the main issues which have been submitted to our consideration the issue whether in the common phrase there shall or shall not be any degree of responsibility at the Centre

Responsibility without the States no solution of the problem.

33 It is obvious at the outset that the very ground on which the Princes advocate responsibility at the Centre in an All-India Federation constitutes the strongest possible argument against responsibility at the Centre in a purely British India Federation for a British India Centre would have to deal as now with matters intimately affecting the States yet would as now be unable to give the States any effective voice in its deliberations. If the States are [illegible] by the exercise of such powers by the present Government of India their exercise by Ministers responsible to a purely British India electorate could hardly fail to lead to serious friction. Indeed the position of the Governor General in such circumstances as the sole representative of the Crown in its treaty relations with the States and therefore as the sole mediator between a British India electorate and the State Rulers would be an almost impossible one We agree therefore with the Statutory Commission in thinking

[1] *Infra* para 2[illegible]

that a responsible British-India Centre is not a possible solution of the constitutional problem, or would, at most, only be possible at the price of very large deductions from the scope of its responsibility.

The Statutory Commission and responsibility at the Centre

34 But the Statutory Commission went further than this. They considered the question of responsibility at the Centre from another angle also It is unnecessary to repeat all that they said on the subject, but they realised, as every student of the problem must realise, that responsible government at the Centre could not in any case extend to all departments of the Central Government, and that, in any case, it would be necessary to reserve Defence and Foreign Affairs from the sphere of ministerial responsibility. Hence any measure of responsible government at the Centre must involve a system of dyarchy, and the Commission held strongly the view that a unitary Government at the Centre was essential and should be preserved at all costs "It must be a Government," they wrote, "able to bear the vast responsibilities which are cast upon it as the central executive organ of a sub-continent, presenting complicated and diverse features which it has been our business to describe", and they expressed the opinion that a plan based on dyarchy was unworkable and would, indeed, constitute no real advance in the direction of developing central responsibility. In this connection we may usefully quote one passage from the Report of the Statutory Commission on the working of dyarchy in the Provinces "The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eyes of the Legislature, the electorate and the public Provincial Legislatures were by the nature of the Constitution set the difficult task of discharging two different functions at the same time In the one sphere, they were to exercise control over policy, in the other, while free to criticise and vote or withhold supply, they were to have no responsibility The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the Councils have worked to such an extent that perhaps the most important feature of the working of dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of the opportunities of the Legislatures on the transferred side, and to magnify their functions in the reserved field"

Possible divisions of responsibility:

35 These are undoubtedly formidable objections, but they do not, we think, exhaust the question It is impossible adequately to discuss the real issues involved in a decision for or against the introduction of some measure of responsibility at the Centre if the discussion is confined to the Centre itself and is conducted in terms of "dyarchy" Like so many other words used in political controversy, "dyarchy"

has collected round it associations which tend to obscure issues rather than to clarify them. The truth is that in any Constitution and above all in a Federal Constitution there must be a division of responsibility at some point and at that point there will always be a danger of friction. In framing a Constitution the problem is to draw the line at a point where these necessary evils will be minimised and the line will be drawn at different points according to the character and problems of the particular country concerned It may be drawn at a point where the powers which are reserved from the normal operation of the Constitution have in ordinary times little or no practical effect on the formulation and execution of policy—as for instance the line drawn in the British North America Act between the powers of the Governor General and the powers of the Governor General in Council But in India no easy solution of this kind is possible There the line drawn must reserve to the Governor-General large powers which will have an important effect upon the policy of the government as a whole Broadly speaking three possible lines of division have been suggested to us each of which deserves to be briefly discussed

(1) in the provincial sphere

36 One is a line drawn within the sphere of the Provincial Governments in such a way as to reserve to the Provincial Governors the responsibility for the maintenance of law and order and to the Governor-General the responsibility for all central subjects This solution eliminates dyarchy at the Centre but perpetuates it in the Provinces and we have already indicated our reasons for rejecting it We shall discuss these reasons more fully in the body of our Report

(2) between Centre and Provinces

37 The second line suggested to us is one coinciding with the line of division between the Provincial Governments and the Central Government the former being wholly responsible governments and the latter wholly irresponsible This was the immediate (though not as we shall suggest in a moment the ultimate) line of division recommended by the Statutory Commission and it is the one which we should probably have felt constrained to recommend if we had been considering a purely British India Federation But it is we think open to very serious objections which could not be fully present to the mind of the Statutory Commission Though it might appear at first sight to eliminate altogether the evils of dyarchy its real effect is rather to conceal dyarchy than to eliminate it Its actual effect would be to reserve to the Governor General much of the unpopular duty of taxation while allotting to responsible Provincial Ministers the agreeable task of spending the money so raised It must be remembered that the Statutory Commission based their financial recommendations on an estimate of the future revenues of India far more sanguine than would now be accepted by any expert They therefore felt able to recommend the establishment of a Provincial Fund fed by automatic allocations from central revenues which in turn would be automatically distributed

among the Provinces. In a State so happily provided with ample revenues that their division between two distinct sets of public authorities could be fixed in advance by the Constitution for all time, the existence of an irresponsible government at the Centre side by side with responsible governments in the Provinces might no doubt have been expected to work reasonably well. It is, however, impossible for Parliament to-day to base its policy on any such assumption. The Central and Provincial Governments must, as we shall show when we come to our financial recommendations, be financed from year to year largely out of the same purse. That purse, for some time to come at least, will be at best barely adequate for the needs of both In these circumstances, Central policies of taxation and Central economic policies, on which the wealth of India and the volume of her public revenue will depend, must be of the most immediate and fundamental interest to the Government of every Province. A line of division which withheld this whole range of policy from the consideration of responsible Ministers could hardly fail to become the frontier across which the bitterest conflicts would be waged, and its existence would afford to Provincial Ministers a constant opportunity to disclaim responsibility for the non-fulfilment of their election promises and programmes

(3) in the Central Government itself

38 Lastly, the line can be drawn within the Central Government itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other Central subjects to the care of responsible Ministers, subject to the retention by the Governor-General of special powers and responsibilities, outside his Reserved Departments, similar to (though not necessarily in all respects identical with) those which we contemplate should be conferred on the Provincial Governors The nature of the Central safeguards which would in that event be necessary will be discussed, like the Provincial safeguards, in the body of our Report, but, subject to them, the effect of drawing the line at this point would be to make Indians responsible for legislation and administration over the whole field of social and economic policy It is, we think, a fair conclusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately be made They contemplated an eventual All-India Federation They believed that the Constitution which they recommended for the Central Government would contain in itself the seeds of growth and development It was, no doubt, for that reason, and foreseeing the course of that development, that they suggested that the protection of India's frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government Apart from the difficulties of this suggestion, to which we shall have to return in the body of our Report, it obviously involves a dyarchy of much the same

kind as would result from a frank reservation to the Governor General of the Department of Defence In fact the reservation of Defence with the reservation of Foreign Affairs as intimately connected with Defence is the line of division which corresponds most nearly with the realities of the situation It is also the line of division which on the whole creates the least danger of friction. As the Statutory Commission pointed out in the passage we have already quoted dyarchy has not even in the Provinces raised any insuperable difficulties in the inner counsels of the government and the danger of friction in the inner counsels of the Central Government will be even smaller for the administration of Defence and Foreign Affairs will normally at any rate have few contacts with other fields of Central administration under the new Constitution

The Central Legislature and the Army Budget.

39 The one real danger of friction and that a serious one lies in the very large proportion of Central revenues which is and must continue to be absorbed by the Army Budget. It is true that this difficulty is inherent in the facts of the situation It exists at the present day Ever since the Act of 1919 the Central Legislature has constantly sought to magnify its functions in the reserved field of the Army Budget The serious friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of Provincial Legislatures yet denied all effective control over any branch of Central finance It is also true that the Statutory Commission s own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally responsible to the Legislature for finance The existence of a large standing charge for Defence circumscribes but by no means destroys the financial responsibility of Ministers Far the greater part of most national budgets are in effect unalterable because they are the results of commitments arising out of the past in the field of foreign relations or of social reform The margin of discretion which is available to Ministers anywhere in increasing or reducing taxation or altering expenditure is usually small and this margin in India will be within the control of Ministers subject to the Governor General s special responsibility in the financial sphere Ministers will naturally wish to save money on defence in order that they may spend it on nation building departments under their own charge but we believe that responsible Indian Ministers will be not less anxious for adequate defence than the Governor General and will usually after discussion with him support his view of what is necessary and will be able to convince their following in the Legislature that it is sound Yet in spite of these weighty considerations the danger of friction

between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British India Federation But that is not the proposition we are now discussing We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention above What we are now discussing is an All-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an All-India Federation, has introduced a new and, in our judgment, a determining factor It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the Princes who have always taken so keen an interest in all matters relating to defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues at stake It is, indeed, one of the main advantages of an All-India Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution

Governor-General's power of effective intervention not increased by retention of irresponsibility at the Centre

40 Before leaving this subject we ought, perhaps, to refer to one argument which has been urged upon us in favour of a wholly irresponsible Central Government, and also to one particular danger which we think Parliament should be careful to avoid The argument to which we refer is that an irresponsible Centre would constitute a reserve of power which could be used at any moment by the Governor-General to redress the situation in any Province, if responsible government in that Province should break down This argument seems to us to rest on a misapprehension. The Governor-General in an irresponsible Centre would have no more and no less power of intervention in the Provinces, either to forestall a constitutional breakdown or to restore the situation after such a breakdown, than he would possess under our recommendations Our recommendations do, in fact, reserve to him such power through the interaction of his own and the Provincial Governors' special powers and responsibilities, but, in so far as his opportunities of intervention are limited, they are limited, not by the constitution of the Central Government, but by the establishment of autonomous Provincial Governments. The danger which we think Parliament should avoid lies in the fact, on which we have already insisted, that ministerial responsibility is not itself a form of government which can be created or prevented at will by the clauses of a statute, so much as a state of relationships which tends to grow up in certain circumstances and under certain forms of government It follows that a Constitution Act cannot legislate against ministerial responsibility at the Centre, if its other provisions, or the facts of the case,

are such as to encourage the development of such responsibility. It has been suggested to us that, while the Central Government should be declared by the Constitution to be an irresponsible Government, the Governor General should be free to select any of his Executive Council from among the members of the Central Legislature, and that a member of the Legislature assuming ministerial office should not be obliged to resign his seat in the Legislature. There is much to be said for such a proposal, but it is in fact a proposal not for the perpetuation of an irresponsible Government but for the gradual introduction of a responsible one. It would tend to introduce responsible government at the Centre by insensible degrees without any statutory limitation of the scope of ministerial power and responsibility. That is indeed, broadly speaking, the way in which responsible government actually grew up in Canada. It may be difficult to draw any satisfactory line of division between reserve powers and responsible government, but under the conditions of the problem that we are examining Parliament should be careful not to draw a definite line in principle only to blur it in practice.

Weakness of present Central Government.

41. We cannot leave this subject without asking the vital question which Parliament will have to answer, whether a Central Government of India constituted as we propose would fulfil the condition we have already laid down—*whether it would provide a Central authority strong enough to maintain the unity of India and to protect all classes of her citizens.* That question cannot be answered apart from a consideration of the strength or weakness of the Central Government as it now exists. As our enquiries have proceeded we have been increasingly impressed, not by the strength of the Central Government as at present constituted, but by its weakness. It is confronted by a Legislature which can be nothing but (in Bagehot's words) "a debating society adhering to an executive". The members of that Legislature are unrestrained by the knowledge that they themselves may be required to provide an alternative government; their opinions have been uninformed by the experience of power, and they have shown themselves prone to regard support of government policy as a betrayal of the national cause. It is no wonder that the criticism offered by the members of such a Legislature should have been mainly destructive, yet it is abundantly clear from the political history of the last twelve years that criticism by the Assembly has constantly influenced the policy of Government. As a result the prestige of the Central Government has been lowered and disharmony between Government and Legislature has tended to sap the efficiency of both. Indeed the main problem which in this sphere Parliament has now to consider is how to strengthen an already weakening Central Executive. We believe that the Central Government which we recommend will be stronger than the existing Government and we see no other way in which it could be strengthened.

Emergence of body of central opinion in United Kingdom and in India.

42. We would close this introductory part of our Report with one final word. At its outset we recorded our recognition of Indian aspirations and our sense of the weight to be attached to them. Having done so, we have examined the problem from another angle, concentrating our attention on the facts of Indian government and of Indian social conditions. Our study of these facts has led us to certain concrete conclusions which in the body of our Report we shall have further to elaborate and justify. But, having thus reached our conclusions by the exercise of our judgment on the facts of the case, we may be permitted to urge their acceptance as embodying, in their broad lines, a policy on which responsible public opinion both in this country and in India may unite. We have already referred to the long process of collaboration through which successive Governments in this country have sought to ascertain whether any substantial measure of agreement was possible upon the principles which should inform a new constitutional settlement in India. It can scarcely have been expected by the members of the Statutory Commission, or by the participants in the Round Table Conferences, that free and unfettered discussion of issues so formidable and complex would succeed in achieving so substantial a measure of common agreement as that which has emerged in the course of the last two years. No scheme for the future government of India is, of course, at present in existence which can be said to have been agreed even unofficially between representatives of the two countries. Indeed, we recognize that even moderate opinion in India has advocated and hoped for a simpler and more sweeping transfer of power than we have felt able to recommend. Moreover, it must not be forgotten that there is a section of opinion in India with whom the prospect of agreement appears to be remote. But, from the discussions and personal contacts of recent years, there has emerged in each country what may fairly be described as a body of central opinion which has at least reached a juster appreciation both of the difficulties which impress and the motives which inspire a similar body of opinion in the other country. It is now possible to discern much common ground where previously the dividing gulf might have seemed to be unbridgeable. Not only has this movement of opinion been observable both in this country and in British India, but the Indian States also, in making their contribution to recent discussions, have shown their willingness to go much further than seemed possible at the time of the Statutory Commission's Report in the direction of agreement with His Majesty's Government and with representatives of public opinion in British India on a new and far-reaching policy of Federation. On the common ground thus marked out we believe that the foundations of a firm and enduring structure can be laid.

Issues with which Parliament is faced

43 Parliament is, indeed, confronted with grave problems, but it is also offered a great opportunity. There are moments in the history of nations when a way seems to be opened for the establishment between people and people of new relations more in harmony

with the circumstances of the time but when that way is beset by all the dangers inherent in any transfer of political power Such moments are a sharp test of political sagacity of the statesman's instinct for the time and manner of the change. If that instinct fails either from rashness or from over-caution there is small chance of recovery In the present issue the dangers of rashness are obvious enough. They have been urged upon us by some to whom the majestic spectacle of an Indian Empire makes so powerful an appeal that every concession appears to them almost as the betrayal of a trust but they have been urged on us also by others whose arguments are based on the undeniable facts of the situation. Those arguments are for instance that no self governing nation of the British Empire has ever been faced within its borders at one and the same time by all the problems with which India has to deal by the ever present risk of hostilities on her frontier by the cleavage between communal interests by innumerable differences of race and speech by a financial system largely dependent for its credit on centres outside India and by a vast population in every stage of civilisation Against all this the dangers of over-caution are no less plain The plea put forward by Indian public men on behalf of India is essentially a plea to be allowed the opportunity of applying principles and doctrines which England herself has taught and all sections of public opinion in this country are agreed in principle that this plea should be admitted No one has suggested that any retrograde step should be taken very few that the existing state of *things should be maintained unaltered The necessity for con*stitutional advance at least within the limits of the Statutory Commission's Report may be regarded as common ground We have given our reasons for believing that the constitutional arrangements which we recommend including a measure of responsibility at the Centre follow almost inevitably from these accepted premises If this conclusion is rejected the rejection will be generally regarded in India as a denial of the whole plea and two consequences at least must be faced the prospect of an All India Federation will disappear perhaps for ever but certainly for many years to come and the measure of harmony achieved in British India by the co-operative efforts of the last few years together with that body of central opinion which we have described will be irretrievably destroyed.

Parliament's choice must be resolute and decisive

41 *These are grave issues and if we do not enlarge further upon* the consequences of a failure to make the right use of the present opportunity it is because we believe that the choice that is now to be made must be made without fear and without favour on a just estimate of the facts of a situation and the feelings of a people on a cool calculation of the risks involved in any of the alternative courses open to us but without hesitations born of timidity We have recommended the course which appears to us to be the right one but whatever course Parliament may eventually choose it ,

above all necessary that its choice should be resolute and decisive By general admission, the time has come for Parliament to share its power with those whom for generations it has sought to train in the arts of government; and, whatever may be the measure of the power thus to be transferred, we are confident that Parliament, in consonance with its own dignity and with the traditions of the British people, will make the transfer generously and in no grudging spirit.

SECTION II

PROVINCIAL AUTONOMY

(1) PRELIMINARY REMARKS

The Committee's terms of reference.

45 Our terms of reference direct us to consider the future government of India and in particular to examine and report upon the proposals in Command Paper 4268 commonly known as the White Paper[1] The latter in fact, embodies a complete scheme for Indian constitutional reform and we have found it convenient to make it the basis for the setting out of our conclusions although we desire to make it quite plain that our deliberations have in no way been restricted to the proposals which it contains

Arrangement of White Paper

46 The proposals in the White Paper fall under three main heads which have been commonly referred to as Provincial Autonomy Federation and Responsibility at the Centre It is our intention to examine these proposals and to state certain general conclusions at which we have arrived and thereafter to examine separately the proposals in relation to the following complementary or subsidiary matters —Distribution of Legislative Powers Finance the Services the Judiciary Commercial Discrimination Constituent Powers the Secretary of State and the Council of India the Reserve Bank the Future Administration of Indian Railways Audit and Auditor-General Advocates-General and Transitory Provisions This appears to us the more convenient course to adopt in order that the essential elements of the scheme put forward by His Majesty s Government may be seen in their proper perspective unobscured by the mass of detail which the White Paper necessarily contains We should add that we have not thought it necessary to mention in our Report every matter of detail with which the White Paper deals but only those which appear to us of sufficient general importance to warrant discussion It may be assumed that we have no comment to offer on the proposals in the White Paper to which we make no special reference and we are content to leave them to be dealt with at the discretion of His Majesty s Government in the legislative proposals which they will lay before Parliament

Burma

47 The proposals in the White Paper do not deal specifically with the question of Burma in relation to Indian constitutional problems because opinion in Burma on the future of the country had not at the date of the issue of the White Paper become crystallized The Statutory Commission recommended that Burma should cease to be a part of British India and we have arrived at the same conclusion In these circumstances it is our intention to deal fully with the future constitution of Burma in Section VI of our Report[2] where we shall set out and discuss the reasons which have appeared to us to justify our recommendation

[1] [illegible] the First Annex to this Volume [illegible]
[2] [illegible] p [illegible]

(2) The Autonomous Provinces

Definition of Provincial Autonomy

48. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in which that exclusive authority is to be exercised. It represents a fundamental departure from the present system, under which the Provincial Governments exercise a devolved and not an original authority. The Act of 1919 and the Devolution Rules made under it, by earmarking certain subjects as "Provincial subjects," created indeed a sphere within which responsibility for the functions of government rests primarily upon the Provincial authorities; but that responsibility is not an exclusive one, since the Governor-General in Council and the Central Legislature still exercise an extensive authority throughout the whole of the Provinces. Under the proposals in the White Paper, the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though, as we shall explain later, the Governor-General in virtue of his power of supervising the Governors will have authority to secure compliance in certain respects with directions which he may find it necessary to give.

The principle accepted

49. "The Provinces are the domain," wrote the authors of the Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit." Their intention was to give an independent life to the organisms which would in future form the members of a British-India Federation, an ideal at that time not within measurable distance. To-day, so rapid has been the march of events since 1919, we are discussing not only a Federation of British India, but an All-India Federation; and we could not ourselves contemplate such a Federation, whether it comes about in the immediate or more distant future, which in its British Indian aspect is composed of other than autonomous units, independent within their own sphere of any central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds.[1] Of all the proposals in the White Paper, Provincial Autonomy has

[1] Report, Vol. II, para. 27.

received the greatest measure of support on every side. The economic, geographical and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression free from interference by a remote Central Government. We proceed therefore to consider the manner in which the proposals of His Majesty's Government give practical effect to the autonomy principle.

The Ambit of Provincial Autonomy

Distribution of legislative powers between Centre and Provinces

50. The first problem is to define the sphere within which Provincial Autonomy is to be operative. The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively and to define the Central and Provincial spheres of government by reference to this distribution.[1] In Appendix VI, List II, of the White Paper are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the exclusively Provincial List) represent generally, with certain additions, those which the Devolution Rules under the Act of 1919 earmarked as "Provincial subjects", and we are of opinion that in its broad outline the List provides a satisfactory definition of the Provincial sphere. We shall have certain suggestions and recommendations to make later when we come to consider the List in detail, and there are a few subjects included in it with regard to which a complete provincialization might, as it seems to us, be prejudicial to the interests of India as a whole. It will, however, be convenient to leave this aspect of the matter for subsequent examination.

Concurrent legislative powers

51. There is, however, another List (Appendix VI, List III) in which are set out a number of subjects with respect to which it is proposed that the Central Legislature shall have a power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws.[2] Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also ha

[1] White Paper, Proposal 114.
[2] White Paper, Proposals 111, 112.

a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances of the first are provided by the subject matter of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the unco-ordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province.

Provincial legislation to meet local requirements

52. We had at first thought that the case could be met by so defining the powers of the Central Legislature as to restrict its competence in this sphere to the enacting of broad principles of law, the Provincial Legislatures being left to legislate for the Provinces within the general framework thus laid down We are, however, satisfied that, with regard at any rate to some of the subjects in List III, the local conditions in a Province may require the enactment of legislation modifying a general law applicable to the Province, and that the power of enacting complementary legislation alone would not suffice If it be said that this difficulty could be met by entrusting the Central Legislature with the power themselves to legislate for the purposes of meeting the particular needs of a single Province, our answer would be that it is wrong in principle to give the Central Legislature power to enact legislation for one Province only, on a matter which *ex hypothesi* must necessarily be one of exclusively local concern There is no analogy between local legislation enacted by the Parliament at Westminster at the instance of a single local authority, and a power to legislate for an autonomous British-Indian Province Nor can we disregard the obvious fact that the necessity for obtaining Central legislation might in practice cause grave difficulties to a Province, especially in cases where the demand for an amendment of the law is immediate and urgent

Conflicts of law in concurrent field

53 The White Paper proposes that, where there is conflict between the Central and Provincial legislation with respect to a subject comprised in List III, the Central legislation shall prevail, unless the Provincial legislation is reserved for and receives the assent of the Governor-General[1] This appears to us an appropriate method for effecting a reconciliation between the two points of view, and it has the further merit of avoiding the legal difficulties which any attempt further to refine the definitions in List III for the purposes of

[1] White Paper, Proposal 114.

distributing the legislative power between the Central and Provincial Legislatures would of necessity create. We therefore, approve the principle of the Concurrent List though we reserve for subsequent consideration the question of the particular subjects which in our opinion ought to be included in it

The residuary legislative power

54 We have pointed out above that in List II are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers and that generally speaking this List provides a satisfactory definition of the provincial sphere. List I in Appendix VI similarly sets out the matters with respect to which the Central Legislature is to have exclusive legislative powers and these two Lists (together with the Concurrent List) are so widely drawn that they might seem at first sight to cover the whole field of possible legislative activity and to leave no residue of legislative power unallocated It would however be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked nor can it be assumed that new subjects of legislation unknown and unsuspected at the present time may not hereafter arise and therefore however carefully the Lists are drawn a residue of subjects must remain however small it may be which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures The plan adopted in the White Paper is that the allocation of this residue should be left to the discretion of the Governor General and settled by him *ad hoc on each occasion when the need for legislation arises It would be* necessary under this plan to make provision for the formal record of the Governor-General s decisions as having statutory force

Difficulty of White Paper proposal

55 This scheme of allocation of powers has obvious disadvantages It will be observed that for the purpose of reducing the residuary powers to the smallest possible compass the lists of subjects dealt with in all three Lists are necessarily of great length and complexity whereas apart from the question of the Concurrent List if it had been possible to allocate residuary legislative powers to e g the Provinces only a list of Central powers would have been required with a provision to the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre and conversely if the residue *had been allocated to the Centre This broadly is the plan which* has been adopted in Canada and Australia the residuary powers being vested in the case of Canada in the Dominion Legislature and in the case of Australia in the Legislatures of the States Even so experience has unhappily shown that it has been impossible to avoid much litigation on the question whether legislation on a particular subject falls within the competence of one Legislature or the other and it seems clear that the attempt made in the White Paper to allocate powers over the whole field of legislation

by the expedient of specific enumeration must tend considerably to increase the danger of litigation by multiplying points of possible inconsistency.

Cleavage of opinion in India,

56 On the other hand, there are two grounds on which the White Paper scheme may be defended, one of immediate political expediency and the other of constitutional substance On the first point, we gather from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers ; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces Where an apparently irreconcilable difference of opinion thus exists between the great Indian communities on a matter which both of them appear to regard as one of principle, the proposals of His Majesty's Government may be defended as a reasonable compromise On the point of constitutional substance, it seems to us that, if a choice were to be made between the two alternative principles to which we have just drawn attention, the logical conclusion of the proposals in the White Paper would be the allocation of all residuary legislative powers to the Provincial Legislatures, but this solution would we think, require to be accompanied by the insertion in List I of some general overriding power of Central legislation in matters of All-India concern, since a new subject of legislation cannot be left to fall automatically into the provincial field, irrespective of its national implications But it is precisely an overriding clause of this kind which has led to litigation in other non-unitary States On the whole, therefore, we are unwilling to recommend an alteration of the White Paper proposal[1] in a field in which experience shows that no wholly satisfactory solution is possible

Existing and Future Governors' Provinces

The present Governors' Provinces

57. The existing Governors' Provinces are the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, and Burma We have considered the problem of Burma in a separate part of our Report,[2] and it is unnecessary to say more in this place than that we have come to the conclusion, as we have already indicated,[3] that Burma should cease to be a part of British India The White Paper proposes that there shall in future be a new Province of Sind and a new Province of Orissa, the former being carved out of the Presidency of Bombay, and the latter mainly out of the Province now known as Bihar and Orissa, but also including a portion of what is now Madras territory, and a very small area from the Central Provinces

[1] We deal in para 236 below with the position as it would affect the Indian States

[2] *Infra*, p 245

[3] *Supra*, para 47

id.

58 On the constitution of Sind as a separate Governor s Province we quote the following passage from the Statutory Commission s Report "We have great sympathy with the claim but there are grave administrative objections to isolating Sind and depriving it of the powerful backing of Bombay before the future of the Sukkur Barrage is assured and the major readjustments which it will entail have been effected. Even if it were held that the time is ripe for the separation of Sind to be seriously considered there would have to be a close and detailed enquiry into the financial consequences which would follow from such a step before a decision could be taken."[1] When this opinion was recorded the Barrage was still under construction but it is now completed and successfully in operation though the general fall in agricultural prices has necessarily affected the financial position The financial difficulties involved in the creation of an autonomous Sind have been examined first by an expert committee and later by a conference of representatives of Sind presided over by an official and the findings of both Committees have been reviewed by the Government of India and by His Majesty's Government We are informed that it is now anticipated that the new Province would start with an initial yearly deficit of about ¾ crore which would be gradually extinguished in about 15 years and that after that period the Province should be able to dispense with assistance. We discuss elsewhere the effect of the separation of Sind from Bombay upon both Central and Bombay finances and it is sufficient to say here that the difficulties do not appear to be of such magnitude as to form any insuperable bar to the establishment of a separate Province.

Case for separation from Bombay

59 The difficulty of administering from Bombay a territory racially and geographically separated from the rest of the Presidency has proved capable of being overcome under present arrangements but the case for separation which is strong under any form of administration is greatly strengthened if the administration of Bombay is transferred to an Executive responsible to the Legislature The question is however one which has aroused acute communal controversy The case for separation has been pressed not merely by the Sindi Muhammadans but also by Muhammadan leaders elsewhere in India Separation has been as strongly opposed by the Hindu minority in Sind who though they only form about 27 per cent of the population are economically powerful and under the present provincial franchise actually form a majority of the voters It is impossible not to sympathise with the desire of the Hindu community in Sind to remain under the rule of the richer Bombay Government which is also likely to share their communal sympathies Nevertheless it seems to us that apart from other considerations the communal difficulties that would arise from attempting to administer Sind from Bombay would be no less great than those which may face a separate Sind administration

[1] Report Vol II para 34

It is proposed that the Hindus shall be allotted a considerable proportion of the seats in the Legislature, and they will of course enjoy the protection of the special safeguards for minorities which will apply to the minorities in other Provinces; and it may be noted that a Sindi Muhammadan witness who appeared before us recognized that the Hindus must play an important part in the government of the Province.[1] The alternative of a union between Sind and the Punjab has long been discussed, and there are very strong arguments in favour of it, especially in view of the joint interest of the two territories in the waters of the Indus. Unfortunately, this alternative now seems to be opposed by practically all sections of opinion concerned. On a review of all the factors in the problem, we have reached the conclusion that the constitution of Sind as a separate Governor's Province is the best solution possible in present circumstances. In view of the very special importance to the Province of the continued success of the Barrage project and of the very large financial issues involved, which will concern the Federal Government as well as the Province of Sind, it is proposed that the Governor of Sind should have a special responsibility for the administration of the Barrage.[2] This seems to us an essential provision and is one to which we understand that little or no objection has been taken.

Orissa.

60. The Statutory Commission describe the union which now exists between Orissa and Bihar as "a glaring example of the artificial connection of areas which are not naturally related"[3], and the demand of the Oriyas for separation has been long and insistent. The main difficulty here is a financial one, since Orissa is now and may well remain a deficit area. A separate Province of Orissa would however be perhaps the most homogeneous province in the whole of British India, both racially and linguistically; the communal difficulty is practically non-existent; and its claim appears to have the sympathy and support of all parties in India. The financial effect of the creation of the proposed new Province upon the finances of the Federation is discussed elsewhere, and it appears to us that any financial difficulties likely to be caused thereby are not serious enough to outweigh the advantages which will accrue from the separation. In these circumstances we recommend that a new Province of Orissa be constituted.

The Central Provinces and the Berars

61. We may here mention the situation which exists in the Central Provinces in connection with the territory known as the Berars. This territory forms part of the dominions of His Exalted Highness the Nizam of Hyderabad, but has since 1853 been under British administration and in 1902 was made the subject of a perpetual lease granted by His Exalted Highness. It is administered with, but not as part of, the Central Provinces. The inhabitants elect a

[1] Minutes of Evidence, Vol. IIc, p. 2164, A 496.
[2] White Paper, Proposal 70.
[3] Report, Vol. II, para. 38.

certain number of representatives who are then formally nominated as members of the Central Provinces Legislature and legislation both of that Legislature and of the Central Legislature is applied to the Berars through the machinery of the Foreign Jurisdiction Act It has been announced that an arrangement has now been made between the Government of India and His Exalted Highness whereby without derogation from His Exalted Highness s sovereignty the Berars shall be administered as part of a new *Province to be known as the Central Provinces and the Berars* that is to say, if and when Provincial Autonomy is established under the new Constitution We have learned with great satis faction of this arrangement which will obviate the difficulties which might otherwise have arisen if the setting up of responsible government in the Central Provinces had necessitated a severance between two areas which have so long been in substance if not in form under a single administration ; and we think that the successful working of Provincial Autonomy in the Central Provinces will owe much to His Exalted Highness s wise and far-seeing action

Provincial boundaries

62. The White Paper proposes that the present Governors Provinces shall retain the boundaries which exist at the present time with such alterations as the establishment of Sind and Orissa may involve [1] In the case of Sind, the new Province is to comprise the whole area at present under the jurisdiction of the Commissioner in Sind and it is suggested that the boundaries of Orissa shall be those recommended by a Committee which inquired into the subject in 1932, with certain modifications considered desirable by the Govern ment of India We understand that in the case of Orissa the boundaries proposed have given rise to local controversy but the question has been re-examined by the Secretary of State for India with the assistance of several of our members and we recommend that the boundaries should be in accordance with the conclusions[2] thus reached namely that there should be added to the Province as defined in the White Paper[3] —

(a) that portion of the Jeypore Estate which the Orissa Committee of 1932 recommended should be transferred to Orissa

(b) the Parlakimedi and Jalantra Maliahs

(c) a small portion of the Parlakimedi Estate including Parlakimedi Town.

The White Paper does not refer to the possibility of a future revision or adjustment of provincial boundaries but provision will have to be made in the Constitution Act for this purpose We think that the actual alteration of boundaries should be carried out by Order in Council but that the initiative should come from the

[1] White Paper Proposal 61

[2] *Vide* Col. II (Session 1933–4) Records p. [illegible]

[3] White Paper Proposal 61 second footnote

Provinces concerned and should receive the concurrence of the Central Government and Legislature. We make recommendations later in this Report with regard to changes to be effected in the Act by Order in Council and the parliamentary control to be exercised over them.

Constitution of future Governors' Provinces

63 It is possible that in the future it may be found desirable to constitute new Governors' Provinces, either by a sub-division or an amalgamation of existing areas. We think that the power to create a new Governor's Province should be reserved to the Crown and to Parliament, but that appropriate provision should be made in the Constitution Act to ensure that the Provinces affected and the Central Government are given adequate opportunities for expressing their views

Constitutional advance in the provincial field

64 If effect is given to our recommendations, there will be in India eleven autonomous Provinces. Of these the area of Bengal is approximately 78,000 square miles, and its population approximately 50,000,000, the corresponding figures for Madras are 136,000, and 45,000,000; for Bombay (excluding Sind) 77,000, and 18,000,000, for the United Provinces 106,000, and 48,000,000, for the Punjab 99,000, and 24,000,000 It is over these immense areas and populations that Indians would in future be responsible for every function of civil government in the provincial sphere. The area of Great Britain is 89,000 square miles, with a population of 45,000,000; of France 212,000 square miles, with a population of 42,000,000, of Italy 120,000 square miles, with a population of 42,000,000. We make these comparisons because they illustrate the scope which will be afforded to Indian statesmen by the grant of responsible government in the provincial field, as well as the burden which in every Province will fall upon Indians in both Legislatures and Governments. It is no doubt natural that the attention of political opinion in India should at the time of our enquiry be concentrated rather upon the question of responsibility at the Centre; and we think that it is therefore all the more important that we should in this place emphasise the magnitude of the constitutional advance which we contemplate in the Provinces and emphasise the extent of the opportunity thus presented to Indians to justify in the service of their respective Provinces their claim for self-government

(3) The Provincial Executive

The Provincial Executive

65 We come now to the proposals of the White Paper on the subject of the Provincial Executive, and it will be convenient in this part of our Report to consider two general questions, first, the Provincial Executive as such, and second, its relation to the Provincial Legislature

The present Executive

66 The Statutory Commission in the first part of their Report describe the Provincial Executive as it at present exists, and it is unnecessary for us to repeat in detail what they have already

said [1] In brief the provincial subjects with which the Provincial Executive is *now concerned are sub-divided into* transferred subjects and reserved subjects. The first group are administered by the Governor acting with Ministers the second by the Governor in Council. The Members of the Governor s Council who may not exceed four and of whom by an invariable rule at least half are Indians are appointed by His Majesty and one at least must have been for not less than twelve years in the service of the Crown in India the Ministers are appointed by the Governor The Governor presides at meetings of his Executive Council where ordinarily the decision of the majority prevails though the Governor has in case of equality of votes a casting vote and in certain circumstances a right to over rule his Councillors. The Ministers are chosen by the Governor from the elected members of the Provincial Legislative Council and are not members of the Executive Council though in many Provinces both Executive Councillors and Ministers meet regularly under the presidency of the Governor for the purpose of discussing matters of common interest in Madras for example we understand that it has been always the practice to regard Councillors and Ministers as forming as it were a single body by which all questions of policy are discussed though the *responsibility for* actual decisions upon them rests upon the Governor in Council or on the Governor advised by his Ministers as the case may be, according to the nature of the subject The Governor is required to be guided by the advice of his Ministers in relation to transferred subjects unless he sees sufficient cause to dissent in which case he may require action to be taken otherwise than in accordance with that advice. Ministers *hold office at the Governor s pleasure* but *the financial powers* of the Legislature give the latter the means of influencing ministerial policy The Members of Council though *ex-officio* members of the Legislature are independent of it and in practice are appointed for a fixed term of five years

Executive power and authority to be vested in Governor

67 The White Paper proposes to do away with this dyarchical *system It vests the whole executive power and authority of the* Province in the Governor himself as the representative of the King and it provides the Governor with a Council of Ministers to aid and advise him in the exercise of any powers conferred on him by the Constitution Act except in relation to such matters as will be left by that Act to the Governor s discretion [2] The proposal therefore is to give Ministers who (according to the White *Paper) may not be officials* and *will be members of a Legislature*

[1] Report Vol I paras 159 161

[2] White Paper Proposal 46 There will be in a few Provinces certain Excluded Areas" (i.e. tracts where any advanced form of political organisation is unsuited to the primitive character of the inhabitants) These will be administered by the Governor himself and Ministers will have no constitutional right to advise him in connection with them.

to which they will look for support, the constitutional right to advise the Governor over practically the whole of the provincial sphere It will be observed that Provincial Autonomy does not necessarily imply a system of government of this kind, and the two should not be confused , but since, for the reasons which we have given earlier in this Report, we think that the time has now come for enabling Indians to assume a greater measure of responsibility for the government of the Provinces, in our opinion (though we reserve for subsequent consideration the details of the scheme) the proposal in the White Paper which we have described above is the correct constitutional method of bringing about that result It is according to precedent, and it is based upon English constitutional theory and practice. It follows from what we have said above that the Ministers will not be concerned with the appointment of the Governor himself

Analogy with British constitutional system

68 The adoption of English constitutional forms need not however imply, and the White Paper does not contemplate, the establishment in each Province of a system analogous in all respects to that which prevails in the United Kingdom at the present day , nor is there any inconsistency in this, as some have supposed A brief examination of the manner in which from time to time those forms have been adapted in practice to the needs of other communities in allegiance to the Crown will sufficiently make this clear

British constitutional theory

69 In English theory all executive power (with certain exceptions not here relevant) is to-day, as it has been from the earliest times, vested in the Monarch The limits of this power are determined in part by common law and in part by statute, but within those limits the manner of its exercise is not subject to any legal fetter, save in so far as a statute may specify formalities for the doing of a particular executive act But at all times in English history the Monarch has had councillors to aid and advise him in the exercise of his power, and their status and functions at different periods mark the successive stages of constitutional development The great nobles, who had claimed a prescriptive right to be consulted and who were often powerful enough to subject to their will a weak or reluctant King, gave place, as the complexity of government increased, to a more permanent Council, whose members were the King's servants, selected by him from nobles and commoners alike, whom he consulted or not as he pleased, and who became the instruments of his own policy The growing influence of the House of Commons at a later date made it necessary for the King always to number among his advisers persons who were members of that body , and the last stage was reached when he sought the advice, not of the Council as a whole, but only of those members of it who represented the predominant political party of the day By the middle of the 19th century, constitutional usage and practice had so far supplemented constitutional law that the powers possessed in legal theory by the Sovereign were almost entirely exercised on the advice of Ministers possessing for the time being the confidence of Parliament

Its flexibility

70 This ingenious and convenient adjustment of a legal framework to the successive stages of political evolution has given a flexibility to the English Constitution which it would have been impossible to secure by any Act of Parliament or written Declaration of Rights To imprison constitutional practice and usage within the four corners of a written document is to run the risk of making it barren for the future This was foreseen by the framers of those Dominion and Colonial Constitutions which have followed the British model and since it by no means followed that the circumstances of a new State were appropriate for the application of the whole body of English doctrine in its most highly developed form recourse was had to another device no less flexible for the purpose of indicating to the Governor General or Governor how far in the exercise of the executive power he was to regard himself as bound by English precedent and analogy This is the Instrument of Instructions and though Dominion and Colonial Constitutions and especially the former necessarily embody much that is still regulated by usage and custom in the United Kingdom the Instrument of Instructions long preserved (and in many cases still preserves) a sphere in which constitutional evolution might continue without involving any change in the legal framework of the Constitution itself

Adaptation to different stages of constitutional development

71 It has thus been found possible in communities in every state of development which possess Constitutions based upon the English model without doing violence to existing forms of government to bring them into harmony with the political circumstances of the time Constitutional usage and practice is an ever changing body of doctrine and not an immutable body of dogma nor can it be assumed *a priori* that usage and practice which may be eminently adapted to the circumstances of the United Kingdom can be applied without any qualification to the circumstances of India. This would be to assume that the political development in India has reached the same stage as in this country the facts are notoriously otherwise The picture presented by India is that of a country with a population so far from homogeneous and so divided by racial and religious antagonisms that government by majority rule as it is understood in this country is admittedly impossible at the present time and the proposal of the White Paper that even the Governor's Council of Ministers should be so constituted as to include as far as possible members of important minority communities appears to be firmly supported by a great mass of Indian political opinion

Governor's power to dissent from Ministers' advice

72 The White Paper recognises rightly as it seems to us that in these circumstances the Governor in whom the executive power of the Province is legally vested may from time to time have to exercise on his own responsibility powers which elsewhere and under other conditions might be exercised on the advice of Ministers [1] It is

[1] White Paper Proposals 70 73

permissible to recall the religious and political conflicts which distracted our own country for so many generations before the settlement which followed the events of 1688 It is not until after that date that the beginnings of responsible government, as we now know it, are to be found, and for many years the Monarch, even if he sought the advice of Ministers, continued to act on his own judgment in every branch of the administration. Not until the two great parties in the State could trust each other not to abuse the political power which the hazard of the polls might place in the hands of one of them, would it have been possible effectively to secure peace and good government without the presence of some authority able and willing to exercise that power independently of both

The Instrument of Instructions

73 It would be possible to rely entirely upon prerogative instruments for the purpose of adapting English constitutional practice to the conditions which obtain to-day in India Thus the Instrument of Instructions might direct the Governor to be guided generally by the advice which he receives from his Ministers, but reserve to him a very wide discretion to act upon his own responsibility when the circumstances seemed so to require, and for this plan many precedents are to be found in the history of Colonial Constitutions Or the Instrument might specify certain particular matters with regard to which the Governor is to exercise his own discretion, whatever the advice of his Ministers might be; and precedents for this are also to be found The White Paper, however, introduces a new method for which, so far as we are aware, no exact precedent is to be found, but which is not hastily to be rejected on that account. It proposes that the Constitution Act shall declare that for certain specified purposes the Governor is to have a "special responsibility,"[1] and we understand the intention to be that the Instrument of Instructions shall refer in terms to these special responsibilities and direct the Governor, where in his opinion one of them is involved, to take such action as he thinks that the circumstances may require, even if this means dissenting from the advice tendered to him by his Ministers, while in other matters he will be guided by that advice.

Relations between Governor and Ministers.

74 We have already pointed out that, in the present Government of India Act, there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas It will also contain a declaration that certain special responsibilities are to rest upon the Governor For the rest, it will provide that the Governor shall have a Council of Ministers to aid

[1] White Paper, Proposal 70

and advise him but his relations with his Ministers are left to be determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governor's special responsibilities over and above the matters which are committed to his sole discretion should be laid down in the Act itself rather than that they should be left to be enumerated thereafter in the Instrument of Instructions. In the first place Indian opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited and secondly the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers during the passage of the Constitution Bill itself. On the other hand we agree that it would be undesirable to seek to define the Governor's relations with his Ministers by *imposing a statutory obligation upon him to be guided* by their advice since to do so would be to convert a constitutional convention into a rule of law and thus perhaps to bring it within the cognisance of the courts. We do not however think that the inherent legal power of the Governor to which we have referred[1] to act upon his own responsibility is set forth with sufficient clearness in the White Paper and we recommend that it should be more explicitly defined.

Constitutional implications of Governor's "special responsibilities"

75. We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up *for decision the decision is to be that of the Governor to the exclusion* of his Ministers. In no sense does it define a sphere from which the action of Ministers is excluded. In our view it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor after receiving ministerial advice to *signify* his dissent from it and even to act in opposition to it if in his own unfettered judgment he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous and certainly they will not be as some appear to think of daily occurrence. We leave for later consideration the list of the special responsibilities themselves and the manner in which they are defined but if we have rightly appreciated their place in the Constitution it appears to us undesirable to seek to define them with meticulous accuracy though we consider that their general scope and purpose should be set out with sufficient precision.

[illegible] at [illegible] the Instrument [illegible]

76. The White Paper proposes a novel procedure in connection with the Instrument of Instructions viz. that an opportunity shall be given to Parliament of expressing an opinion upon it before it is finally issued by the Crown[2]. There is we think ample justification for this proposal which has been rightly extended not only to the original Instrument but also to any subsequent amendments of it.

[1] See para 72
[2] White Paper Proposal [illegible]
[3] White Paper Proposal [illegible]

and we are satisfied that in no other way can Parliament so effectively exercise an influence upon Indian constitutional development It is essential that the vital importance of the Instrument of Instructions in the evolution of the new Indian Constitution should be fully appreciated Thus, Ministers would have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor's own discretion; but the Governor could in any event, and doubtless often would, consult them before his own decision was made, and if at some future time it seemed that this power of consultation might with safety be made mandatory and not permissive, we can see nothing inconsistent with the Act in an amendment of the Instrument of Instructions for such a purpose But so grave are the issues involved in the evolution of the Indian Constitution that it would be neither wise nor safe to deny Parliament a voice in the determination of its progressive stages The initiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day, but the consequences of any action taken may be so far reaching and so difficult to foresee that Parliament, if denied a prior right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protest. For this reason we are clearly of opinion that, as the White Paper proposes, it is with Parliament that the final word should rest We suggest as the appropriate procedure that the Crown should communicate to Parliament a draft of the proposed Instrument or of any subsequent amendments and that Parliament will if it sees fit present an Address praying that the Instrument should issue in the form of the draft or with such modifications as are agreed by both Houses, as the case may be.

Special questions connected with the Executive.

77. We have now considered the nature of the Provincial Executive in broad outline, but five questions of capital importance which arise in connection with the subject remain to be examined These are: (i) The nature of the Governor's special responsibilities, (ii) the Governor's selection of Ministers; (iii) the field in which Ministers are to be entitled to advise the Governor, (iv) the arrangements whereby the Governor will secure that his information with regard to the current affairs of the Province is adequate to enable him to discharge his special responsibilities, (v) the special and additional powers, if any, which the Governor ought to possess

(i) *Nature of the Governor's "Special Responsibilities"*

The Governor's "special responsibilities" defined

78 It is proposed in the White Paper that the Governor shall have a special responsibility in respect of—

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof, (*b*) the safeguarding of the legitimate interests of minorities, (*c*) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests,

(*d*) the prevention of commercial discrimination (*e*) the protection of the rights of any Indian State (*f*) the administration of areas declared in accordance with provisions in that behalf to be partially excluded areas (*g*) securing the execution of orders lawfully issued by the Governor-General.[1]

The Governors of the North West Frontier Province and of the proposed new Province of Sind are respectively declared to have in addition a special responsibility in respect of—

(*h*) any matter affecting the Governor s responsibilities as Agent of the Governor-General in the Tribal and the Trans Border Areas and (*i*) the administration of the Sukkur Barrage.

Peace and tranquillity of the Province Minorities, Public Services

79 With regard to (*a*) the Joint Memorandum of the British India Delegation urges a double limitation on the scope of this special responsibility firstly that the special responsibility itself should be restricted to cases in which the menace arises from subversive movements or activities tending to crimes of violence and secondly that any action taken by the Governor under it should be confined to the department of law and order We cannot accept these suggestions Terrorism subversive movements and crimes of violence are no doubt among the graver menaces to the peace or tranquillity of a Province but they do not by any means exhaust the cases in which such a menace may occur and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw Still less can we see any justification for restricting the Governor s action to the department of law and order by which we suppose is meant the police department There are many other branches of administration in which ill advised measures may give rise to a menace to the peace or tranquillity of the Province and we can readily conceive circumstances in connection with land revenue or public health to mention no others which might well have this effect With regard to (*b*) the Joint Memorandum suggests that the phrase legitimate interests should be more clearly defined and that it should be made clear that the minorities referred to are the racial and religious minorities generally included by usage in that expression We doubt if it would be possible to define legitimate interests any more precisely The obvious intention is to secure some means by which minorities can be reasonably assured of fair treatment at the hands of majorities and legitimate interests seems to us a very suitable and reasonable formula Nor do we think that any good purpose would be served by attempting to give a legal definition of minorities the only effect of which would be to limit the protection which the Governor s special responsibility is intended to afford No doubt it will be the five or six well recognised and more important minorities in whose interests the Governor s powers will usually be invoked but there are certainly other well-defined sections of the population who may from time to time require protection and we can see no justification for defining the expression

[1] White Paper Proposal 0

for the purpose of excluding them We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word Nevertheless to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plain, and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform merely because it is resisted by a group of persons who might claim to be regarded as a minority With regard to (*c*), the Joint Memorandum proposes that here also the expression "legitimate interests" should be clearly defined, and that the Governor's special responsibilities should be restricted to the rights and privileges guaranteed by the Constitution We assume that the intention of the White Paper is to guarantee to public servants not only their legal rights but also equitable treatment, a thing not susceptible in our opinion of legal definition The authors of the Joint Memorandum would no doubt say that Ministers can be trusted to act in these matters in a reasonable way, and we do not doubt that this is so ; but we think that they should also assume that neither will Provincial Governors act unreasonably in discharging the special responsibilities which the Constitution Act will impose upon them If Ministers in fact act reasonably, as no doubt they will, the occasions on which a Governor will find it necessary to dissent from the advice which they tender to him may never in practice arise

Rights of States, Partially Excluded Areas

80 We discuss elsewhere (*d*), *i e*, the prevention of commercial discrimination [1] With regard to (*e*), the "rights" here referred to must necessarily mean rights enjoyed by a State in matters not covered by its Instrument of Accession,[2] which may be prejudiced by administrative or legislative action in a neighbouring Province The duty, as we understand it, is laid on the Governor to secure that the balance is held evenly between Province and State, with due regard to the established rights of either party, and clearly in a matter of this kind he will be guided by the advice or directions of the Governor-General With regard to (*f*), the responsibility for the government of partially excluded (as opposed to wholly excluded) areas will primarily rest upon Ministers, but we agree that, in view of the responsibility which Parliament has assumed towards the inhabitants of the backward and less civilised tracts in India, it is right to impose a special responsibility in this respect upon the Governor

Execution of orders of Governor-General

81. With regard to (*g*), it is clear that this must be a special responsibility of the Governor The Governor-General exercises a wide range of powers in responsibility to the Secretary of State and through him to Parliament. The exercise of some of these powers may from time to time require the co-operation of Provincial administrations, and a Governor must be in a position to give effect to any directions

[1] *Infra*, paras 342–360

[2] *Infra*, para 155.

or orders of the Governor-General designed to secure this object even if their execution may not be acceptable to his own Ministers We refer elsewhere to the case where a difference of opinion has occurred between Federal and Provincial Ministers in the ministerial sphere arising out of directions given by the former which the latter are unwilling to obey [1]

pecial ircum tances of Iorth West rontier Province nd Sind

82. With regard to (*h*) it is apparent that the close connection between the Governor s responsibilities within the administered districts of his Province and the responsibilities of the Governor General exercised through the person of the Governor in his other capacity as Agent-General for the Tribal Tracts on the borders of the Province makes a provision of this kind necessary With regard to (*i*) we agree that this special responsibility is necessary in the case of Sind in view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest which the Central Government has in it

'he Berars

83 But in our opinion the two proposals in the White Paper which have reference to special circumstances in particular Provinces do not exhaust the requirements of this kind It has come to our notice that under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years and which as we have already pointed out[2] will continue in another form under the new Constitution there has been a tendency on the part of the inhabitants of the Berars and of their representatives in the Legislature to criticise the apportionment of expenditure between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars We express no opinion as to the justification for such criticisms but it is evident that under a system of responsible government the scope for grievances on this account may well be increased We think, therefore that the Governor of the joint Province should have imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which he regards as likely to give justifiable ground for complaint on this account Without attempting to usurp the functions of the draftsman we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as —

> The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of the Berars and the Central Provinces

We think moreover that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues if he is no satisfied that past practice

[1] *Infra* para 221
[2] *Supra* para 61

affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for "the protection of the rights of any Indian State" as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad.

A special responsibility for safeguarding financial stability of Province not recommended.

84 We think it desirable to make some reference to the suggestion that among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province, following the analogy of the special responsibility of this kind which, as we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation [1] A similar proposal was examined and rejected by the Statutory Commission[2] on the ground that a power of intervention over so wide a field would hinder the growth of responsibility We agree with this view We shall have certain recommendations to make below which will give the Governor adequate powers in relation to supply and taxation to ensure that the due discharge of his special responsibilities is not impeded by lack of financial resources [3] But the addition of a special financial responsibility would increase unduly the range of his special powers There is no real parallel with the situation at the Centre, where there is a paramount necessity to avoid action which might prejudice the credit of India as a whole in the money markets of the world, and where so considerable a proportion of the revenues are needed for the expenditure of the reserved departments [4] The Statutory Commission point out[2] that the Central Government, through their powers of control over provincial borrowing, should be able to exercise a salutary influence over Provinces We also attach importance to this method of checking improvidence on the part of a Province, and, as we explain below,[5] we approve, subject to one modification, the proposals in the White Paper for the regulation of provincial borrowing.

(ii) *The Governor's Selection of Ministers*

Qualifications proposed for Ministers

85 The White Paper proposes that the Instrument of Instructions shall direct the Governor to select his Ministers in consultation with the person who in his judgment is likely to command the largest following in the Legislature, and to appoint those persons, including so far as possible members of important minority communities, who will best be in a position collectively to command the confidence of

[1] *Infra*, paras 168 and 170
[2] Report, Vol II, para 189
[3] *Infra*, paras 104, 107 and 315–320
[4] *Infra*, para 172
[5] *Infra*, para 266

the Legislature It is also proposed that Ministers must be or become within a stated period (by which we understand a period of six or twelve months to be intended), members of the Legislature [1]

Ministerial responsibility and representation of communities

86 The question how a direction to the Governor to include among his Ministers so far as possible members of important minority communities is to be reconciled with ministerial responsibility in the accepted sense of that expression to a Legislature which is itself based on a system of communal representation and in which the numbers of the representatives of the different communities are fixed by statute and unalterable, will be more conveniently discussed later when we examine the more general question of the relation of the Provincial Executive to the Provincial Legislature.[2] We accordingly confine ourselves here to a consideration of the proposal in the White Paper that every Minister shall be or become within a stated period a member of the Legislature.

Difficulties of proposal that Ministers should be elected Members of Legislature

87 Indian opinion appears to attach great importance to this qualification as securing in the most effective manner control by the Legislature over the Executive It is unknown to the law of the United Kingdom but it has long been the rule in this country that a Minister must either find a seat within a reasonable time or resign his appointment unless the Prime Minister should see fit to recommend him for a peerage so that the qualification exists in practice if not in law though during the War there were instances of Ministers who had a seat in neither House On the other hand we were impressed by the argument that at least in some Provinces the Governor might find it difficult to constitute an efficient Ministry from the members of a small and inexperienced Legislature and it is no doubt true that in India owing to the very small proportion which the educated classes bear to the total population there is no certainty that in the smaller Provinces the Legislatures will always contain men fit or experienced enough to assume the heavy responsibilities which Provincial Autonomy under the new order must necessarily involve It was therefore suggested to us that the Governor ought not to be thus restricted in his choice and that he ought to be in a position if the need should arise to select a Minister or Ministers from persons otherwise qualified for appointment but to whom the doubtful pleasures of electioneering might make no appeal

Suggested methods for meeting difficulty

88. We have considered various suggestions to meet this difficulty, (1) that the Governor should be empowered if he thought fit to appoint a Minister from outside the Legislature the Minister so appointed having precisely the same status as other Ministers and sharing their policy and political fortunes with the right to take part in all proceedings of the Legislature though not entitled to vote

[1] *White Paper Proposal 6*[illegible]

[2] *Infra* para 11[illegible] 115

(2) that in addition to the elected members, there should be one or two members nominated by the Governor, who would be eligible for appointment as Ministers, though not necessarily so appointed; (3) that the Governor should be empowered, if he desired to have an outside Minister, to nominate the person whom he selected as a member *ad hoc* of the Legislature, and (4) that the Ministers themselves should be empowered, if so requested by the Governor, to co-opt someone from outside and present him to the Governor for appointment We can see no advantage, and many disadvantages, in the second and third of these suggestions, and the fourth is open to the grave objection that it would infringe the Governor's prerogative The only plan, therefore, which, in our opinion, merits consideration is the first We have, however, come to the conclusion that such advantages as might be anticipated from a provision in the Constitution Act enabling the Governor to appoint to his Ministry one or more persons who are not members of the Legislature would weigh little in the balance against the dislike and suspicion with which such a provision would undoubtedly be viewed almost universally in India—a dislike and suspicion so strong that we think it unlikely that any Governor would, in fact, find it possible to exercise such a power We recommend, therefore, that the proposal in the White Paper to which we have alluded[1] should remain unchanged.

(iii) *The Sphere of Action of Ministers*

Law and order

89 The White Paper, as we have already stated, proposes that Ministers shall advise the Governor in all matters other than the administration of Excluded Areas and matters left by law to the Governor's own discretion With regard to the first of these two exceptions, we approve the conclusions, and are content to adopt the arguments, of the Statutory Commission, and with regard to the second, such matters must *ex hypothesi* be left to the Governor's sole decision, though he may, and no doubt often will, consult Ministers upon them With regard to other matters which fall within the provincial sphere, the only question, but one of first rate importance, on which there is any substantial dispute, is whether the administration of the subjects known compendiously as "law and order" should be retained in the Governor's hands

Arguments for and against transfer

90 This question is one on which strong views are held on both sides On the one hand, it is urged that the grant of responsible government to an autonomous Province would be a mockery, if the administration of law and order were withheld On the other, it is objected that the maintenance of law and order is in India so vital a function of the Executive that it would be incurring too great a risk to transfer it to Indian Ministers, until they had proved their capacity in other and less dangerous fields, that the morale

[1] *Supra*, para 86

of the Police would be imperilled by political pressure upon Ministers which they might not have the strength or courage to resist and *that the impartiality of the Force in the event of communal disturbances might become suspect* It would be idle to deny the force of these arguments especially when it is remembered that the public order and security of a Province depend not more on the executive action of the Police than on the efficient performance of his administrative as distinguished from judicial functions by the district magistrate who would under the proposals in the White Paper equally be subject to the control of a Minister Nevertheless after an anxious consideration of all the circumstances we do not see our way to differ from the general conclusion reached not without hesitation by the Statutory Commission

Control of law and order an essential attribute of responsible government.

91 We find ourselves unable to conceive a government to which the quality of responsibility could be attributed if it had no responsibility for public order In no other sphere has the word responsibility so profound and significant a meaning and nothing will afford Indians the opportunity of demonstrating more conclusively their fitness to govern themselves than their action in this sphere From one point of view indeed the transfer of these functions to an Indian Minister may be in the interest of the police themselves whom it will no longer be possible to attack as they have been attacked in the past as agents of oppression acting on behalf of an alien power but we prefer to base our conclusion upon the broader grounds indicated above Nevertheless it must not be supposed that we are blind to the risks implicit in the course which we advocate for these in our opinion cannot be regarded lightly or as the phantoms of a reactionary imagination The qualities most essential in a police force discipline impartiality *and confidence in its officers are precisely* those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above and it would indeed be disastrous if in any Province the police force to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister If therefore the *transfer is to be made as we think it should it is essential that the* Force should be protected so far as possible against these risks and in the following paragraphs we make recommendations designed to secure this protection

The Governor's special responsibility

92. First there are the proposals in the White Paper already mentioned The Governor is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof The effect of this as of all other special responsibilities is to enable the Governor if he thinks that the due discharge of his special responsibility so requires to reject any proposal of his Ministers or himself to initiate action which his Ministers decline to take Further there flows from this special

responsibility, not only the right to overrule his Ministers, but also special powers—legislative and financial—to enable him to carry into execution any course of action which requires legislative provision or the provision of supply. If, therefore, the Governor should be of opinion that the action or inaction of Ministers is jeopardising the peace or tranquillity of the Province, it will be his duty to take action to meet the situation. If the situation is one requiring immediate action, he can issue any executive order which he may consider necessary. If the situation is one which cannot be dealt with by an isolated executive order—if the Minister in charge of the Department appears unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibility—the Governor can dismiss and replace the Minister, or, if necessary, the Ministers as a body, with or without resort to a dissolution of the Legislature. If he fails to find an alternative Government capable of administering law and order on lines consistent with the discharge of his special responsibility, he will be obliged to declare a breakdown of the constitution, and to assume to himself all such powers as he judges requisite to retrieve the situation. We are not contemplating such a course of events as probable; but, if it occurs, we point out that provision is made to meet it.

The Police Rules

93. We turn now to our own further recommendations for the specific protection of the Police Force itself. Of course, the due discharge of his special responsibility for peace and tranquillity will, in itself, entitle the Governor to intervene immediately if, by reason of ill-timed measures of economy or the attempted exertion of political influence on the Police Force or from any other cause, the morale or the efficiency of that Force is endangered. Further, the Governor has another special responsibility: it is his duty to secure to the members of the Police, as of other Public Services, any rights provided for them by the Constitution Act and to safeguard their legitimate interests. These are important safeguards, but there is one element in police administration which requires to be specially protected. We refer to the body of Regulations known as the "Police Rules", promulgated from time to time under powers given by the various Police Acts. A large number of the Rules deal with matters of quite minor importance and are constantly amended, in practice, on the responsibility of the Inspector-General of Police himself. It would be unnecessary to require the Governor's consent to every amendment of this kind. But the subject-matter of some of the Rules is so vital to the well-being of the Police Force that they ought not, in our opinion, to be amended without the Governor's consent; and the same consideration applies *a fortiori* to the Acts themselves, which form the statutory basis of the Rules. Our aim is to ensure that the internal organisation and discipline of the Police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field. We, therefore, recommend that the prior

consent of the Governor given in his discretion should be required to any legislation which would amend or repeal the General Police Act in force in the Province or any other Police Acts (such as the Bombay City Police Act the Calcutta Police Act the Madras City Police Act and Acts regulating Military Police in Provinces where such forces exist) We further recommend that any requirement in any of these Acts that Rules made under them shall be made or approved by the local Government is to be construed as involving the consent of the Governor given in his discretion to the making or amendment of any Rules which in his opinion relate to or affect the organisation or discipline of the Police It will of course be open to the Governor-General in his discretion to give directions to the Provincial Governor as to the making maintenance abrogation or amendment of all such rules.

The Special Branch.

94 But there is another vital department of police administration to which we must draw attention. It has been represented to us very forcibly that whatever may be the decision with regard to the transfer of law and order generally special provision ought to be made with regard to that branch of the Police which is concerned with the suppression of terrorism We do not here refer to those members of the Police who are occupied in combating terrorism as part of their regular functions in the prevention of crime and the maintenance of order nor again to the Criminal Investigation Department which exists in every Province to assist the ordinary police in the detection of ordinary crime. We have in mind that organisation which is sometimes known as the Special Branch a body of carefully selected officers whose duty is the collection and sifting of information on which executive police action against terrorism is taken. Their work necessarily involves the employment of confidential informants and agents and it is obvious that these sources of information would at once dry up if their identity became known or were liable to become known outside the particular circle of Police officers concerned Though at the moment this problem is perhaps of immediate importance only in the Province of Bengal and to a lesser extent in the Provinces which border on Bengal terrorism and revolutionary conspiracy have not been confined to those territories nor consequently is the necessity for efficient counter revolutionary measures limited to them Bengal however as has been proved to us by the evidence we have received has a particularly long and disquieting record of murder and outrage of which Indians and Europeans have both been the victims It has also shown in a marked degree a rise or fall in such terrorist crime according as the hands of the authorities have been weakened or strengthened and as precautionary and special measures have been relaxed or intensified

Secret Intelligence reports.

95 For these reasons it is in our view essential that the records of any such Intelligence Department should be protected from even the slightest danger of leakage Experience in every country has

how strict this protection must be It has been argued that an Indian Minister, who may have to defend subsequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information on which he is invited to act is in all respects trustworthy, and that the names of the informants or agents from whom it has been obtained could not in the last resort be withheld from him We think that those who argue thus are not acquainted with the general practice in matters of this kind We are informed by those who have experience of such matters in this country that the practice is that in a Secret Service case the names are not disclosed even to the Minister most immediately concerned We have no reason to suppose that Indian Ministers will not adopt the same convention; but the difficulty arises, not because Indian Ministers are likely to demand or disclose the names of informants or agents, but because the informants or agents themselves would not feel secure that their identity might not be revealed So long as this doubt exists, the consequences are the same, whether it is ill-founded or not We, therefore, recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism should be disclosed to anyone other than such persons within the Provincial Police Force as the Inspector-General may direct, or such other public officers outside that Force as the Governor may direct We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions

Special powers required for combating terrorism.

96 But, in addition, the circumstances set out above render it imperative to arm the Governor with powers which will ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than they have been in the past. We are, indeed, particularly anxious not to absolve Indian Ministers, in Bengal or elsewhere, from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them But the issues at stake are so important, and the consequences of inaction, or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, in our opinion, have a special power, over and above his special responsibility "for the prevention of any grave menace to peace and tranquillity," to take into his own hands the discharge of this duty, even from the outset of the new Constitution. This purpose would not be adequately served by placing the Special Branch of the provincial police alone in the personal charge of the Governor. That course has been urged upon us, but we are convinced that it falls short of what is required Instead, we recommend that the Constitution Act should specifically empower the Governor, at his discretion, if he regards the peace and tranquillity of the Province as endangered by the activities, overt or secret, of persons committing or conspiring to commit crimes of violence intended to overthrow the government

by law established and if he considers that the situation cannot otherwise be effectively handled to assume charge to such extent as he may judge requisite of any branch of the government which he thinks it necessary to employ to combat such activities or if necessary to create new machinery for the purpose. If the Governor exercises this power he should be further authorised at his discretion to appoint an official as a temporary member of the Legislature to act as his mouthpiece in that body and any official so appointed should have the same powers and rights other than the right to vote as an elected member The powers which we have just described would be discretionary powers and the Governor would therefore be subject to the superintendence and control of the Governor General and ultimately of the Secretary of State in all matters connected with them We should add that if conditions in Bengal at the time of the inauguration of Provincial Autonomy have not materially improved it would in our judgment be essential that the Governor of that Province should exercise the powers we have just described forthwith and should be directed to do so in his Instrument of Instructions which in this as in other respects would remain in force until amended with the consent of Parliament [1]

Central Intelligence Bureau

97 We have only to add that we have considered in this connection a proposal made to us that the Intelligence Departments —or at all events the Special Branch where such exists—of the provincial Police Forces should be placed under the control of the Governor-General who should utilise them through the agency of the Governor as local offshoots of the Central Intelligence Bureau We agree with the ideas underlying this proposal to this extent that it is essential that the close touch which has hitherto obtained between the Intelligence Departments of the Provinces and the Central Intelligence Bureau should continue But to place the provincial Intelligence Departments under the departmental control of the Central Intelligence Bureau would we think be undesirable as tending to break up the organic unity of the provincial Police Force We recommend therefore that the Central Bureau should under the new Constitution be assigned to one of the Governor General's Reserved Departments as part of its normal activities and that the change in the form of government whether at the Centre or in the Provinces should not involve any change in the relationship which at present exists between the Central Bureau and the Provincial Intelligence Departments Should the Governor General find that the information at his disposal whether received through the channel of the Governors or from the provincial Intelligence Departments through the Central Intelligence Bureau is inadequate he will in virtue of recommendations which we make later[2] possess complete authority to secure through the Governor the correction of any deficiencies and indeed to point out to the

[1] Supra para. [illegible]
[2] Infra para. 22

Governor, and require him to set right, any shortcomings which he may have noticed in the organisation or activities of the Provincial Intelligence Branch

(iv) *The Governor and the Provincial Administration*

Relations between Governor and Provincia Administ tion

98 The question has been raised whether the Governor under a Provincial Constitution such as is now proposed will have at his disposal sufficient information as to the current affairs of the Province to enable him to take timely action in a case where the due discharge of any of his special responsibilities seems to call for his intervention This is a vital issue, for the special powers of the Governor would be entirely nugatory if, by reason of his divorce from current administrative business, the circumstances which might require the exercise of those powers were brought too late to his notice

Importan of the office of Governor

99 The Governor's office is at the present time one of great prestige and authority. Of a large part of the Provincial Administration he is not only the titular but the actual head, and in the administration of the "transferred subjects" also, where he is even now guided by the advice of Ministers, he is able to exercise an influence, both legitimate and constitutional, to an extent for which it would probably be difficult to find analogies in the more politically developed States of Europe and America He presides at meetings of his Ministers, and they are accustomed to look to him for assistance and support, and we see no reason why for many years to come a Council of Ministers, advising over the whole field, and not only over a part, of the provincial administration, should be anxious to deprive themselves of the assistance which a Governor of ripe experience will be able to give them, or regard themselves as representatives of an opposing interest On the other hand, it has been pointed out to us that much of the information of the Governor with regard to current affairs is derived from his intercourse with the Secretaries to Government, almost always members of the Civil Service, who by a practice of long standing enjoy the right of regular access to him for the purpose of discussing cases which in their view merit his personal attention Obviously the Governor as the head of the Provincial Executive must continue to have the unquestionable right to send for and to see any officer of his Government at any time, though no doubt under the new order such personal communication between a Governor and the Secretaries would not occur without the knowledge of the Ministers concerned Beyond this, however, we recognise that, not only for the avoidance of error or misunderstanding, but also as a protection to the Governor in cases where his relations with Ministers may not be always harmonious, it is well to put certain specific powers in the Governor's hands

Rules of Executive business

100 The White Paper authorises the Governor, after consultation with his Ministers, to make, at his discretion, any rules which he regards as requisite to regulate the disposal of Government business

and the procedure to be observed in its conduct and for the transmission to himself of all such information as he may direct[1] We understand that both the distribution and conduct of public business have in India long been regulated almost entirely by rules of this kind and there is therefore nothing strange or novel in the proposal The Governor's rules under the new Constitution will no doubt require to be framed on rather different lines and if they are modified in some directions to be expanded in others but we see no ground for supposing that the rule making power cannot be adapted to meet all the reasonable requirements of the case. It would for example be competent for the Governor to prescribe by rule that orders on certain specified matters are not to be passed unless the decision on them has been initialled by himself This would ensure that all matters in that particular sphere were at least brought to his attention before action was taken upon them. We are not suggesting that the decision taken would on that account be the Governor's alone without or contrary to the advice of his Ministers Unless his special responsibilities were involved his decision would be guided by their advice but that advice would be given after discussion and the Governor would be in a position if he had views of his own on the matter to invite Ministers to weigh and consider them before their advice is given We give the above as an example only for we do not conceive it our duty even if we had the necessary special knowledge to make recommendations on all the matters which the rule making power could possibly include But we think there ought in any case to be a rule laying down with precision the relations between the Governor his Ministers and the Secretaries to Government If it is to be the Council of Ministers who will in future aid and advise the Governor it is plain that the Governor can no longer be advised directly and independently by the Secretaries to Government but we should regard it as extremely unfortunate if the latter were deprived of access to the Governor or prevented from submitting to him such papers as in their opinion he ought to see We recommend therefore that it shall be specifically laid down in the Constitution Act that the rules of business shall contain a provision laying upon Ministers the duty of bringing to the notice of the Governor any matter under consideration in their Departments which involves or is likely to involve any of his special responsibilities and requiring Secretaries to Government to bring to the notice of the Minister and of the Governor any matters of the same kind

The Governor's staff

101 It is essential that the Governor should have at his disposal an adequate personal and secretarial staff of his own This is recognised in the White Paper where it is proposed (rightly in our opinion) that the salary and allowances of such a staff are to be fixed by Order in Council and though included in the annual

[1] White Paper Proposal 60

proposals for the appropriation of revenue, are not to be submitted to the vote of the Legislature[1]. We think also that there should be at the head of this staff a capable and experienced officer of high standing Such an officer would be a man fully conversant with the current affairs of the Province and in close contact with the administration; but we do not for a moment contemplate as some of the Indian delegates seemed to think that he should occupy in any sense a position analogous to that of a Deputy-Governor There is no precise analogy between his position, as we conceive it, and that of any present-day civil servant in Whitehall, and we have no doubt that his duties will vary from time to time as constitutional practice and usage grow In some respects he will occupy the position at present filled by the Governor's Private Secretary, but with duties of a wider and more responsible character We think it right that he should in future be known by some other designation, and we suggest for consideration that of Secretary to the Governor

Influence of Governor on working of responsible government

102. It is clear that the successful working of responsible government in the Provinces will be very greatly influenced by the character and experience of the Provincial Governors We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919,[2] and we do not think that the part which they will play in the future will be any less important or valuable We take note here, though the matter is not altogether relevant to the subject which we have been discussing, of a suggestion pressed by some of the British India Delegation that in future Governors should always be appointed from the United Kingdom and indeed that there should be a statutory prohibition against the appointment of persons who are members of the Indian Civil Service We cannot accept this suggestion We hold strongly the view that His Majesty's selection of Governors ought not to be fettered in any way, and, that there may be no misunderstanding on the point, we desire to state our belief that, in the future no less than in the past, men in every way fitted for appointment as the Governor of a Province will be found among members of the Civil Service who have distinguished themselves in India

(v) *Special Powers of Governor*

Governor's special powers

103 It is plain that purely executive action may not always suffice for the due discharge of the Governor's special responsibilities, in some circumstances it may be essential that further powers should be at his disposal This is recognised in the White Paper, in which it is proposed to give the Governor certain legislative and financial

[1] White Paper, Proposal 65
[2] Report, Vol I, para 165

powers The powers which it is proposed to entrust to the Governor in the event of the breakdown in the constitutional machinery may also be considered under this head.

Legislative powers

104 As regards legislative powers the White Paper proposes to empower the Governor at his discretion to present or cause to be presented a Bill to the Legislature with a Message that it is essential having regard to any of his special responsibilities that the Bill *should become law before a date specified in the Message* and to declare by Message in respect of any Bill already introduced that it should for similar reasons become law before a stated date in a form specified in the Message [1] If before the date specified the Bill is not passed or is not passed in the specified form as the case may be the Governor will be empowered at his discretion to enact it as a Governor s Act either with or without any amendments made by the Legislature after receipt of his Message Under the present Government of India Act where a Provincial Legislature has refused leave to introduce or has failed to pass in the form recommended by the Governor any Bill relating to a reserved subject the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject and thereupon the Bill shall be deemed to have passed and shall on signature by the Governor become an Act of the Legislature It will be seen therefore that one difference between the existing procedure and that which is now proposed is that in the former case a certified Bill is deemed to be an Act of the Legislature whereas in the latter it is declared to be (what indeed it is) a Governor s Act We agree that in addition to the power of issuing emergency ordinances to which we refer later the Governor should have this reserve power of legislation We agree also with the proposed change in nomenclature since we can see no possible advantage in describing an Act as the Act of the Legislature when the Legislature has declined to enact it But we go further We agree with the members of the British India Delegation in thinking it undesirable that the Governor should be required to submit a proposed Governor s Act to the Legislature before enacting it We do not indeed share the fear which we understand the British India Delegates to entertain that the Governor might use this procedure for the purpose of seeking support in the Legislature against his Ministers Our objection rather is that the proposed procedure will be a useless formality in the only circumstances in which a Governor s Act could reasonably be contemplated If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities is not in the unwillingness of the Legislature to pass it but in the unwillingness of his Ministers to sponsor it the remedy lies not in a Governor s Act but in a change of Ministry If on the other hand the obstacle lies in the unwillingness of the Legislature there can clearly be no point in submitting the proposed legislation to it and

[1] White Paper Proposal 9[illegible]

to do so might merely exacerbate political feeling. Since, however, there may be intermediate cases where an opportunity may usefully be given to the Legislature for revising a hasty or unconsidered decision previously made or threatened, we think that the Governor should have the power (which we presume he would, in any case, possess) to notify the Legislature by Message of his intention, at the expiration of, say, one month, to enact a Governor's Act, the terms of which would be set out in the Message. It would then be open to the Legislature, if it thought fit, to present an address to the Governor at any time before the expiration of the month, praying him only to enact the proposed Act with certain amendments which he could then consider upon their merits; or it might even think fit to revise its former decision and to forestall the Governor by itself enacting legislation in the sense desired by him.

Modification of White Paper proposal suggested.

105. We observe that the White Paper proposes that, whereas temporary Ordinances, if extended beyond six months, are to be laid before Parliament,[1] there is no similar proposal in the case of Governor's Acts. We consider that all Governor's Acts should be laid before Parliament and that the Governor before legislating or notifying his intention to legislate should have the concurrence of the Governor-General.

Ordinances.

106. The next special power which it is proposed to give the Governor is the power (for use in emergencies) of issuing temporary ordinances, to be valid for not more than six months in the first instance, but renewable once for a similar period.[2] At the present time, this power is only exercisable, whether for a single Province or for the whole of British-India, by the Governor-General; but we cannot doubt that in an autonomous Province it should in future be vested in the Governor himself. It was urged by the British India Delegation that the power should continue to be vested in the Governor-General; and, although we are unable to accept this proposal in its entirety, we agree that all temporary ordinances if extended beyond six months should be laid before Parliament, and that the concurrence of the Governor-General should be obtained.

Appropriation of revenues.

107. The White Paper next proposes that the Governor shall be empowered to include in the annual appropriation of revenue authenticated by him any additional amounts which he regards as necessary for the discharge of his special responsibilities, provided that the total amount so authenticated under any head of expenditure does not exceed the amount which was proposed to be appropriated under that head when the financial proposals for the year were first laid before the Legislature; that is to say, the Governor will have power to restore any sums included by him for the above purposes in the original proposals for appropriation, if the Legislature has subsequently rejected or reduced them.[3] We have no comment to

[1] White Paper, Proposal 103.
[2] *Ibid.*
[3] White Paper, Proposal 99.

make upon this proposal for it is clearly essential that the Governor should possess powers of this kind if he is to be in a position at all times to discharge the special responsibilities which it is intended to impose upon him and we think that the limitation which is suggested on the exercise of the power is a reasonable one

Ordinances made on Ministers advice

108 It is to be observed that the Governor will only be able to avail himself of the special powers legislative and financial which we have described above when in his opinion one of his special responsibilities is involved and the due discharge of that responsibility requires the exercise of the power In the case of a Governor s Act or the restoration of a rejected appropriation we have no doubt that this is a proper restriction to impose In the case however of the ordinance-making power the matter does not seem at first sight to be so clear for an ordinance assumes the existence of an emergency and this might arise in connection with any branch of the administration whether the Governor s special responsibilities were involved or not But we notice that the White Paper also proposes that the Governor shall have power to make ordinances for the good government of the Province at any time when the Legislature is not in session if his Ministers are satisfied that an emergency exists which renders such a course necessary [1] Such an ordinance is to be laid before the Provincial Legislature and will cease to operate at the expiration of six weeks from the date of the re-assembly of the Legislature unless in the meantime the Legislature has disapproved it by resolution in which case it will cease to operate forthwith There are thus two kinds of ordinance contemplated the first made on the Governor s own responsibility and in the discharge of his special responsibilities the second on the advice of Ministers and therefore necessarily in a sphere in which the Governor will be guided by their advice In these circumstances the whole field appears to be covered and we are satisfied that the Governor s power of making ordinances on his own responsibility but with the concurrence of the Governor General is properly limited to those cases only in which his special responsibilities are involved

Governor s powers in event of breakdown of Constitution

109 Lastly it is proposed to give the Governor power at his discretion if at any time he is satisfied that a situation has arisen which for the time being renders it impossible for the government of the Province to be carried on in accordance with the provisions of the Constitution Act to assume to himself by Proclamation all such powers vested in any Provincial authority as appear to him to be necessary for the purpose of securing that the Government of the Province shall be carried on effectively This Proclamation will have the same effect as an Act of Parliament and will cease to be in force at the expiration of six months unless previously approved by resolutions of both Houses of Parliament though it may be at any time revoked by similar resolutions [2] Events in

[1] White Paper Proposal 101
[2] White Paper Proposal 103

more than one Province since the reforms of 1919 have shown that powers of this kind are unhappily not yet unnecessary, and it is too soon to predict that even under responsible government their existence will never be necessary. We do not read the White Paper as meaning that the Governor, in the event of a breakdown of the constitutional machinery, is bound to take over the whole government of the Province and administer it himself on his own undivided responsibility. We conceive that the intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him; we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely of lesser conflicts or disputes between it and the Governor. If we are right in our interpretation, we approve the proposals, and we are of opinion that it would be unwise, if not impracticable, to specify in any detail the action which the Governor should be authorised to take. A constitutional breakdown implies no ordinary crisis and it is impossible to foresee what measures the circumstances might demand. It is right, therefore, that the Governor should be armed with a general discretionary power to adopt such remedies as the case may require.

Responsibility of Governor to Secretary of State and Parliament

110. It is clear that where the Governor is exercising his special powers or is acting in his discretion, he must be constitutionally responsible to some authority, and that responsibility will be in the first instance to the Governor-General acting in his discretion, and through him to the Secretary of State and ultimately to Parliament. This is the effect of the White Paper proposal,[1] and its importance, particularly in the event, or the danger, of a complete or partial breakdown in the working of the Constitution in a Province, has already been indicated in the first Section of our Report,[2] where we speak of the interaction of the Governor-General's and the Governors' special powers and responsibilities. We shall have to consider another aspect of this subject in a later part of our Report.[3] It is unnecessary for us to comment on it further here.

(4) Relations between the Provincial Executive and Legislature

Vital importance of Executive in India

111. In the preceding paragraphs we have approved the proposal of the White Paper to entrust certain wide discretionary powers to the Governor, and we have recommended that, in certain respects, those powers should be strengthened and extended. We should not wish to pass from this subject without some general review of

[1] White Paper, Proposal 72.
[2] *Supra*, para. 40.
[3] *Infra*, paras. 221–2. *See also supra*, para. 97.

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[1] White Paper Proposal 104
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[2] *Supra*, para 40
[3] *Infra*, paras 221-2 *See also supra*, para 97

the broad considerations which have led us to these conclusions The dominant consideration is the one which we have already emphasised the vital importance in India of a strong Executive It has seemed to us in the course of our discussions with the British India delegates that in their anxiety to increase the prerogatives of the Legislature they have been apt to overlook the functions of the Executive an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both The function of the Executive is to govern and to administer that of the Legislature to vote supply to criticize to educate public opinion and to legislate and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is incompatible with a strong Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present and the strength of the Executive in this country may we think be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that the prerogatives of the Legislature are not to be jealously or factiously asserted in such a way as to prevent the King s Government from being carried on. His Majesty s Opposition is not an idle phrase but embodies a constitutional doctrine of great significance

Difficulties created by communal representation in Ministries

112 *It is a commonplace that this tradition is as yet unknown* in India and that Indian Ministries have not hitherto been able to rely on the support of a disciplined party The Statutory Commission *in surveying the work of the existing Provincial Constitution* observed that Governors in choosing their Ministers have had an exceptionally difficult task and that it could seldom be predicted what *following a Minister would have in the Legislature* quite apart from the fact that his acceptance of office was often followed owing to personal rivalries by the detachment of some of his previous adherents. *It has been urged upon us by the members of the British-*India Delegation that these difficulties will tend to disappear under responsible government. We hope that it will be so and neither we nor the Statutory Commission would have recommended that the experiment should be made if we were not satisfied that under no other system can Indians come to appreciate the value of the tradition of which we have spoken But it must be remembered that in two respects the difficulties of Provincial Ministries in the future may be greater than in the past In the first place they will not in future be able to rely upon the official bloc which in the words of the

Statutory Commission "has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious" In the second place, each Ministry may, as we have already pointed out, be a composite one The Legislatures will be based on a system of communal representation, and the Governor will be directed by his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities A Ministry thus formed must tend to be the representative, not, as in the United Kingdom, of a single majority party or even of a coalition of parties, but also of minorities as such Moreover, the system of communal representation may also tend to render less effective the weapon to which, under most parliamentary constitutions, the executive resorts when confronted by an obstructive Legislature, the weapon of dissolution ; for under such a system even a general election may well produce a Legislature with the same complexion as its predecessor.

A statutory permanence of tenure for Ministry inconsistent with parliamentary government

113 It is unfortunately impossible to provide against these dangers by any paper enactment regulating the relations between the Ministry and the Legislature The British India delegates laid great stress upon the collective responsibility of the Provincial Ministries, and in their Joint Memorandum they urged that the Instrument of Instructions should contain a definite direction to the Governor that the collective responsibility of Ministers is to be introduced forthwith This seems to us to confuse cause and effect. The collective responsibility of Ministers to the Legislature is not a rule of law to be put into operation at discretion, but a constitutional convention which only usage and practice can define or enforce, and, since that convention is the outcome and not the cause of ministerial solidarity, it is as likely to be hindered as helped by artificial devices which take no account of the realities of the situation It is noticeable, for example, that, in Constitutions like that of France where the principle of collective responsibility is laid down in the Constitution, the effect seems to have been merely to introduce the formality of a joint resignation as a preliminary to every reconstruction of a Ministry. Our attention has also been drawn to the possibility of providing that a Ministry, after receiving a vote of confidence from the Legislature on its appointment by the Governor, should remain in office for a fixed period unless previously dismissed by him The objection to this proposal, of which there are obvious possible variants, is that the existence of a Ministry which had not, in fact, the confidence of the Legislature could, in practice, be made impossible There is every reason why Ministries in India should refuse to treat a hostile vote, even on a demand for supply, as necessarily entailing resignation ; it may even be desirable that a Ministry should only resign on a direct vote of no confidence ; but under a system of parliamentary government there is no effective method of securing statutory permanence of tenure to a Ministry faced by a consistently hostile Legislature. All that the framers of a

Constitution can do in this matter is to refrain from any paper provisions which might tend indirectly to prejudice the development of a sound relationship between Ministry and Legislature. We think that the wording of the Governor's Instrument of Instructions proposed in the White Paper in regard to the selection of his Ministers should be re-examined with a view to giving greater latitude to the Governor. It is our earnest hope that in the future parties may develop in the Provincial Legislatures which will cut across communal lines, and the proposed wording of the Instrument of Instructions as it now stands might, if literally obeyed, operate to prevent both the growth of such parties and the formation of homogeneous Ministries. We recognise that nothing ought to be done at the present time which would excite suspicion or distrust in the mind of the minorities, but in this as in other matters we think that the course of wisdom is to give the Governor the widest possible latitude.

Governor's reserve powers a guarantee for development of responsible government.

114. It follows from these considerations that the only way of strengthening the Provincial Executives in India is to confer adequate discretionary powers on the Governor. These powers are defined in the White Paper, we think rightly, as being the Governor's responsibilities, because it is on him that the corresponding special powers must in the nature of things be conferred; but the responsibilities are defined and the powers conferred, not for the purpose of superseding Ministers or enabling them to escape responsibilities which properly belong to them, but primarily in order that the Executive as a whole may possess the authority which experience shows to be essential to the success of parliamentary government. To none of the Governor's special responsibilities do these considerations apply with more force than to that relating to the Public Services; for the existence of an efficient and contented civil service immune from political interference and free from political partialities is the indispensable condition not only for the effective exercise of the Governor's special powers, but also for the strength of the Executive as a whole. On this subject we shall have certain further proposals to make in a later part of our Report.[1] Nor is the case different with the Governor's extraordinary power, if the constitutional machinery should break down, to assume to himself (subject to the overriding authority of Parliament) any function of government that may appear to him necessary, even to the extent of suspending the Legislature and administering the Province without it. Like the power of dissolution, which it supplements, this power is designed to strengthen the Executive as a whole. We hope and are willing to believe that it will never become necessary to put this power into operation; but its existence in the background, together with the whole body of the Governor's reserve powers, may well prove the most effective guarantee for the development of a genuine system of responsible government.

[1] *Infra* pp. 173-192.

115 We may be thought to have laid too great emphasis upon the difficulties likely to arise in the working of the new Constitution in an Indian Province, but we have endeavoured to describe the situation as it has presented itself to us, without prejudice or exaggeration, and if we have emphasised its difficulties, it is because we are anxious that Indians should not be misled by deceptive analogies with the constitutional practice of the United Kingdom Responsible government postulates conditions which Indians themselves have still to create The success of the experiment which we advocate can only be proved by its results, and the political education both of the Legislatures and of the electorate is likely to be a slow process But we are none the less convinced that Indians must be given the opportunity of purchasing their own experience, and we are at one with the Statutory Commission in seeing no future for responsible government in India unless the difficulties to which we have thought it right to draw attention are directly faced and in the end surmounted

Solution of the problem lies in Indian hands

(5) The Provincial Legislature

Unicameral and Bicameral Legislatures

116 The White Paper proposes that in each Governor's Province there shall be a Provincial Legislature consisting, except in Bengal, the United Provinces, and Bihar, of the King, represented by the Governor, and a Legislative Assembly In the three Provinces named, it is proposed that the Legislature shall consist of the King, represented by the Governor, and a Legislative Council as well as a Legislative Assembly It is also proposed that after a period of ten years, a bicameral Legislature may abolish its Legislative Council, and that a unicameral Legislature may present an address to the Crown praying for the establishment of a Legislative Council [1]

Provincial Legislatures

117 We are of opinion that Legislative Councils should also be established in Bombay and Madras, where the conditions are substantially the same as in Bengal and the United Provinces We see no reason for giving an exceptional power to the Provincial Legislatures to amend the Constitution in this one respect, and we think that the abolition or creation of a Legislative Council should, instead, be included among the questions on which, as we shall later propose in our Report,[2] a Provincial Legislature shall have a special right to present an address to the Governor for submission to His Majesty and to Parliament Our recommendations for all five Councils are set out in an Appendix to this part of our Report [3]

Second Chambers suggested for Bombay and Madras

[1] White Paper, Proposal 74
[2] *Infra*, paras 380 and 381
[3] *Infra*, p 84, *see also* para 122.

The Composition of the Legislatures

The Communal Award and the Poona Pact.

118 The White Paper sets out in detail the proposed composition of each Provincial Legislature specifying both the allocation of seats and the method of election to them.[1] In the case of the Legislative Assemblies these are based upon the Communal Award issued by His Majesty's Government on August 4th 1932 with such modifications as have been rendered necessary (1) by the later proposal to create a new Province of Orissa and (2) by the so-called Poona Pact of September 25th 1932 It will be recalled that owing to the failure of the various communities to reach any agreement on the subject principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats His Majesty's Government themselves reluctantly undertook the task of devising a scheme for the composition of the new Legislatures When their Award was published they announced their determination not to entertain any suggestions for its alteration or modification which were not supported by all parties affected but that if any of the communities mutually agreed upon a practicable alternative scheme they would be prepared to recommend to Parliament that that alternative should be substituted for the corresponding provisions in the Award In the Award special arrangements were made to secure representation for the Depressed Classes These were criticised by Mr Gandhi as introducing an artificial division between two parts of the Hindu community and he expressed his intention of fasting unto death as a protest against them. Thereupon negotiations were initiated between representatives of the caste Hindus and of the Depressed Classes and an agreement resulted which was embodied in the Poona Pact. This agreement in the view of His Majesty's Government was within the terms of the announcement made by them and therefore properly to be included as an integral part of the Communal Award

Effect of the Poona Pact.

119 The substance of the Poona Pact is the reservation to the Depressed Classes of a number of seats out of the seats classified as general seats in the Award, which means in effect out of Hindu seats since Hindus form the great bulk of the general electorates. These reserved seats will however be filled by an unusual form of double election. All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies will elect a panel of four candidates belonging to their own body and the four persons who receive the highest number of votes in this primary election will be the only candidates for election to the reserved seat but the candidate finally elected to the reserved seat will be elected by the general electorate that is to say by caste Hindus and by members of the Depressed Classes alike. The number of seats reserved for the Depressed Classes under the Poona

[1] White Paper Ap

Pact is practically double the number reserved under the Communal Award; though the latter gave the Depressed Classes electors a vote in the general constituencies as well as for the special seats reserved for themselves; but whereas under the Communal Award the Depressed Classes electors were to vote separately for the seats reserved for them as well as jointly with other Hindus in the general constituencies, under the Poona Pact there will now only be an election by the general electorate, although the candidates for election will have been previously selected by means of a primary election at which members of the Depressed Classes only will be entitled to vote. Since the Pact does not, and indeed could not, increase the total number of seats assigned by the Communal Award to the different Legislatures, it follows that any increase in the seats reserved for the Depressed Classes must involve a diminution in the seats which will be available for caste Hindus.

The White Paper proposals accepted

120. The Communal Award was criticised by more than one witness who appeared before us on the ground that it operates inequitably in the case of Bengal, and even more inequitably with the modifications resulting from the Poona Pact. There was also criticism of the Award from other Provinces in which the Hindus are in a minority, and we understand that recently there has been a growing tendency in some influential sections of the Hindu community to attack the foundation of the Award. Nevertheless, it is clear to us that there is among almost all the communities in India (not excepting the Hindu) a very considerable degree of acquiescence in the Award in the absence of any solution agreed between the communities, and in fact we entertain no doubt that, if any attempt were now made to alter or modify it, the consequences would be disastrous. The arrangement which it embodies appears to us to be well thought out and balanced, and to disturb any part of it would be to run the risk of upsetting the whole. It accepts indeed the principle of separate electorates for the Muhammadan, Sikh, Indian Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme. We may deplore the mutual distrust of which the insistence on this demand by the minorities is so ominous a symptom, but it is unhappily a factor in the situation which cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the subject. We accept therefore the proposals in the White Paper for the composition of the Legislative Assemblies. As regards the Poona Pact we are bound to say that we consider that the original proposals of His Majesty's Government constituted a more equitable settlement of the general communal question and one which was more advantageous to the Depressed Classes themselves in their present stage of development. They united the two sections of the Hindu community by making them vote together in the general constituencies, thereby compelling candidates to consider the well-being of both sections of their constituents when appealing for their support, while they secured

to the Depressed Classes themselves sufficient spokesmen in the Legislature elected wholly by depressed class votes to ensure their case being heard and to influence voting but not so numerous that the Depressed Classes would be unable to find representatives of adequate calibre Under the pressure of Mr Gandhi s fast these proposals were precipitately modified but in view of the fact that His Majesty s Government felt satisfied that the agreement come to at Poona fell within the terms of their original announcement and accepted it as an authoritative modification of the Communal Award we are clear that it cannot now be rejected Nevertheless as we have said objections to the Pact in relation to Bengal have since been strongly urged by caste Hindus from that Province and if by agreement between the communities concerned some reduction were made in the number of seats reserved to the Depressed Classes in Bengal possibly with a compensatory increase in the number of their seats in other Provinces where a small addition in favour of the Depressed Classes would not be likely materially to affect the balance of communities in the Legislature we are disposed to think that the working of the new Constitution in Bengal would be facilitated

Special interests seats.

121 We have given careful consideration in this connection to the number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to labour in the new Provincial Legislatures Any material alteration in the number of seats allotted to special interests would inevitably involve a reopening of the Communal Award, and we have indicated above the objections to this But we are in any case of opinion that the representation proposed in the White Paper for landlords commerce and industry universities and labour may be regarded as striking a just balance between the claims of the various interests and as affording an adequate representation for them We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38 the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced. Having regard to this to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any rate represent labour interests) and to the extension of the franchise which will bring on the electoral roll large numbers of the poorer and of the labouring classes we are of opinion that the position of labour the importance of which we fully recognise is adequately safeguarded under the proposals embodied in the White Paper

Composition of Second Chambers.

122. The Communal Award did not extend to the Legislative Council of any Province The composition of these Councils which is set out in the White Paper is however based upon the same principles as the Communal Award but since the Legislative

Councils are much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, it is proposed to include a certain number of seats to be filled by nomination by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality or to secure some representation to women in the Upper Houses We think that this is a reasonable arrangement, and we have included provision for it in the detailed recommendations which are set out in the Appendix above referred to We think that the Legislative Councils should not be dissoluble, but that one-third of their members should retire at fixed intervals of three years

The Provincial Franchise

The existing franchise.

123 The provincial electorate under the existing franchise numbers approximately 7,000,000 men and women, or about 3 per cent of the population of British India It will be recalled that the Southborough Committee in 1919, on whose recommendations the present franchise is based, were of opinion that the time was not ripe for any extension of the franchise to women, but Parliament required the Electoral Rules made under the Government of India Act to be so drawn as to enable the Provincial Councils to pass resolutions admitting women to the franchise on the same terms as men, and resolutions for that purpose have in fact been passed in every Province except the North-West Frontier Province But, since the franchise is in the main a property qualification and few Indian women are property owners in their own right, the number of women thus admitted to the franchise was very small and does not at the present time amount to more than about 315,000

The proposals of the Statutory Commission and the Franchise Committee

124 The Statutory Commission were of opinion that the existing franchise was too limited and recommended that it should be extended so as to enfranchise about 10 per cent. of the total population, and they laid a special emphasis upon the need for increasing the ratio of women to men voters In 1932, between the Second and Third Sessions of the Round Table Conference, a Franchise Committee, which was presided over by one of our own number, was appointed by His Majesty's Government for the purpose of examining the whole subject, with a view to an increase of the electorate to a figure not less than the 10 per cent of the population suggested by the Statutory Commission nor more than the 25 per cent suggested at the First Session of the Round Table Conference We are greatly indebted to the admirable and exhaustive Report of the Franchise Committee, which reached its conclusions after prolonged and intensive discussions in India with the Provincial Governments and with Provincial Franchise Committees, and we are satisfied that their recommendations have met with general support from Indian opinion, expressed not only in India but

also at the Third Session of the Round Table Conference in the evidence of the witnesses who appeared before us and in the discussions which we have had with the British India delegates.

The proposals in the White Paper

125 The proposals of His Majesty's Government for the Provincial Franchise are set out in Appendix V to the White Paper and are essentially based with certain modifications of minor importance only save in the case of the women's franchise on the Report of the Franchise Committee We are informed that the proposals have the general support of the Government of India and of the Provincial Governments The basis of the franchise proposed is essentially as at present a property qualification (that is to say payment of land revenue or of rent in towns tenancy or assessment to income tax) To this are added an educational qualification and certain special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent of the Depressed Classes (called in Appendix V Scheduled Castes) it is also proposed to enfranchise retired, pensioned and discharged officers non-commissioned officers and men of His Majesty's Regular Forces and to provide special electorates for the seats reserved for special interests such as labour landlords and commerce The individual qualifications vary according to the circumstances of the different Provinces but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike

Estimate of numbers of proposed electorate

126 We were warned and can readily believe that pending the preparation of electoral rolls the figures furnished to us must of necessity be regarded as only approximate. It is however estimated that the proposals in the White Paper would if adopted create a male electorate of between 28 000 000 and 29 000 000 and a female electorate of over 6 000 000 as compared with the present figures of 7 000 000 and 315 000 that is to say 14 per cent of the total population of British India would be enfranchised as compared with the present 3 per cent and the proposals therefore go beyond the percentage suggested by the Statutory Commission and are nearly midway between the maximum and minimum percentages suggested by the First Round Table Conference

General effect of proposals

127 We are satisfied on the information before us that the proposals taken as a whole are calculated to produce an electorate representative of the general mass of the population and one which will not deprive any important section of the community of the means of giving expression to its opinions and desires. The proposals will in the case of most Provinces redress the balance between town and country which is at the present time too heavily weighted in favour of urban areas they will secure a representation for women for the Depressed Classes for industrial labour and for special interests and they will enfranchise the great bulk of the small landholders of the small cultivators of the urban ratepayers as well as a substantial section of the poorer classes

The proposals administratively practicable.

128 The difficulties which must always attach to any great and sudden extension of the franchise, both in connection with the compilation of the electoral roll and in the actual conduct of elections, are mainly administrative in India, because literacy is rare and the number of persons available to act as efficient Returning Officers extremely limited These are practical obstacles which ardent reformers are sometimes apt to forget, but we are informed that, while the strain of the first election will undoubtedly be considerable, the electorates proposed, subject to certain minor modifications and to one more important modification which we recommend below in the case of Bihar and Orissa, are accepted by the responsible authorities as administratively practicable. The existing system of election is the direct system, which has been in force since 1920, and appears on the whole to have worked well The Franchise Committee, after an exhaustive investigation of possible alternatives, recommended its retention, and they have the support both of the authorities in India and of Indian opinion The proposals in the White Paper are accordingly based upon direct election by territorial constituencies in the case of the various communities, special arrangements being made for election in the case of the constituencies which represent special interests We are informed that His Majesty's Government are not yet in a position to submit their final proposals for the nature of the constituencies which are to return women, for the detailed allocation as between trade union and special labour constituencies of the seats allocated to labour, and for the qualifications to be prescribed in the case of certain of the constituencies representing special interests These matters are still under investigation in India and proposals with regard to them must depend on the result of further expert examination. We would at this stage record, however, our acceptance of the proposal that the seats allocated to labour should be allocated in part to trade unions and in part to special labour constituencies As regards the women's seats, we are provisionally, subject to consideration of special local difficulties, in favour of the reservation of seats in constituencies formed for the purpose and containing both men and women We are inclined to think it desirable that those constituencies should be both urban and rural, and we should see no objection to their area being varied by rotation should this prove to be desirable and practicable.

Suggestions for group system of election considered.

129. We have carefully examined a suggestion to substitute for direct election in territorial constituencies an indirect system of election by means of local groups At first sight an arrangement of this nature would appear to have the advantage of widening the basis of the franchise, of giving an equal vote at the primary stage to every adult, of facilitating voting by the primary elector, and of securing a more experienced and intelligent secondary elector, and having regard to these considerations, we felt it our duty, despite the fact that discussion and experiment in India had led the Indian Franchise Committee to reject it, again to consider its practicability The

effect of the evidence given before us by witnesses of great experience has however been to show that superficially attractive as a system of group election may be the objections to it in existing conditions in India are decisive We have been especially impressed by the administrative difficulties involved in constituting electoral groups given the existence of caste and the reality of the communal problem and by the argument that faction runs so high in many Indian villages that group elections would inevitably become highly contested and that it would be necessary to provide for them all the machinery of an ordinary election We were also informed not only that conditions in the villages had changed so materially of late that the circumstances which some six or seven years ago made it justifiable to put forward a proposal for the use of the group system no longer existed but that there was no real support for the introduction of such a system from any quarter in India. In the light of our further investigation of this question we are satisfied that in the case of the Provincial Legislatures the balance of advantage at the present moment clearly lies in retaining the system of direct election We do not, however desire to be understood as reporting against the introduction of some system of indirect election in the future The considerations which we have advanced against its adoption at the present moment may lose much of their force as social conditions change and as institutions of local self government develop in the Provinces The problem is essentially one which Indians must consider for themselves and on which we feel sure that Parliament will be ready to listen with the utmost attention to any recommendations which may be made to it hereafter by Provincial Legislatures

Importance of development of local self governing institutions.

130 We have alluded above to the development of institutions of local self government in the Provinces This allusion may furnish an opportunity of saying that though this subject did not come directly within the scope of our enquiry we are fully conscious of its great importance. Indeed the progress of self-government in the Provinces of India will depend on the growth not only of responsible Governments at the top but also of local self-governing institutions from the bottom—from the village community or *panchayat* upwards It is thus that the great mass of the Indian peasantry, constituting a vast majority of the people whose welfare has been constantly in our minds during the whole course of our discussions can be trained in those qualities of responsible citizenship which may hereafter entitle them to the full Provincial franchise These are matters upon which Indians must form their own conclusions but we venture to express the hope that they will, from the first give full attention to them

The White Paper proposals approved with certain modifications.

131 We regard the franchise proposals in the White Paper as generally satisfactory subject to the modifications which we indicate below In the case of the general franchise we think that only one modification of substance is necessary In Bihar and Orissa it is proposed that the qualification in rural areas shall be based upon payment of the chaukidari tax at the minimum rate of six annas

per annum ; but, since the White Paper was laid before Parliament, the Provincial Government after further investigation have reported that administrative considerations make it impossible to deal with so large an electorate as this franchise would create. We recommend that, in view of this undoubted difficulty, the rural franchise in Bihar and Orissa should be raised from six annas to nine annas ; and we also recommend that, in view of the dislocation caused by the recent earthquake, the general rural franchise in the Province should as a temporary measure be fixed at twelve annas for the purpose of the first election under the new Constitution[1] We recognise that these recommendations, if adopted, will produce in Bihar and Orissa a percentage of enfranchisement much smaller than in any other Province, but we think that they are justified by the special circumstances of the case We also recommend, as part of the arrangements which have been made with His Exalted Highness the Nizam in connection with the Berars, that in the case of Berar constituencies the educational qualification should include the passing of a corresponding examination in Hyderabad, and that the military service qualification should cover retired, pensioned or discharged officers, non-commissioned officers or soldiers of His Exalted Highness's regular forces

Women's franchise proposals compared with Franchise Committee's recommendations

132 The present ratio of women to men electors for the Provincial Legislatures is approximately 1 20 The recommendations of the Franchise Committee would increase the ratio to 1 4 5, by extending the franchise to all women (1) who possess a property qualification in their own right ; (2) who are the wives or widows of men with the property qualification for the present Provincial Legislatures (slightly different qualifications are proposed for Bihar and Orissa and for the Central Provinces), and (3) who have an educational qualification of literacy (this last qualification to be registered only on application by the potential voter) The proposals in the White Paper are identical with those of the Franchise Committee, save that women qualified in respect of property held by a husband are required to make application to be placed on the electoral roll, and that the educational standard has in most cases been substantially raised We are informed that, on the latest estimates available, these proposals would produce a women's electorate of some 6,000,000 as against a male electorate of between 28,000,000 and 29,000,000, a ratio approximately equivalent to that recommended by the Franchise Committee But of these 6,000,000 only some 2,000,000, that is to say, women qualified to vote in respect of the ownership of property in their own right, would automatically be placed upon the roll, for the remainder, who would be qualified in respect either of property held by a husband or of education, an application to the Returning Officer would be required We have received very strong representations from representatives of women's organisations and

[1] Corresponding modifications will be necessary for Sambalpur and Santhal Parganas, for which a special franchise is proposed in the White Paper

from representative women both in this country and in India that the effect of this proposal would be to prejudice very seriously the position of women under the new Constitution On the other hand we are informed that the authorities in India view with apprehension any proposals which would substantially increase the administrative difficulties likely in any event to be caused in polling the new and extended electorates and they have urged also the importance of giving full weight in connection with the women s franchise to Indian social conditions

Representations with regard to educational and military service qualifications in connection with women s franchise

133 Apart from the difficulties involved in the retention of the 'application requirement we have received strong representations in favour of the substitution of the literacy qualification (to be registered on application) recommended by the Franchise Committee for the qualification of an educational standard proposed in the White Paper It has been urged before us that in many Provinces the educational standard proposed in the White Paper is so high that it will seriously prejudice the legitimate claims of women in general, and in particular the woman who has been educated at home Representations have also been made to us in favour of the extension of the franchise to the wives of men with the military service qualification for the vote and the pensioned widows and mothers of Indian officers non-commissioned officers and soldiers of the regular forces.

Vital importance of women s franchise

134 We have given anxious consideration to all these questions We concur in everything which has been said by the Statutory Commission on the necessity for improving the status and extending the influence of the women of India, and it is in our opinion impossible to exaggerate the importance of securing in the new Constitution a substantial increase of enfranchised women The women s movement in India the Commission observe holds the key of progress and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated citizens [1] This is profoundly true and must be realised by every Indian who has the interests of his country at heart. We are only too well aware of the formidable obstacles which every reformer in this field will encounter and we have reason to believe for example that there is even now a large body of opinion in India which would condone the dreadful practice of suttee. We are therefore all the more convinced of the necessity for strengthening the position of women under the new Constitution and we are not satisfied in the light of the discussions which have taken place that the proposals in the White Paper are adequate to achieve this object. We are particularly impressed by the unfortunate consequences likely to follow from the application requirement though we fully recognise that under existing conditions there are strong arguments which can be adduced in favour of it We sympathise also with the contention that the standard of the

[1] Report, Vol. I para. 71

educational qualification is too high, and we are wholly in agreement with those who desire to enfranchise the wives of men with the military service qualification for the vote, and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces

Modifications in White Paper proposals recommended.

135 In these circumstances, after a careful examination of the whole problem and in the light of further enquiries which have been made at our request by the Government of India and the local Governments, we recommend the following modifications in the White Paper proposals for the women's franchise ; and we record our opinion that it should not be beyond the administrative capacity of the Provincial Governments to give effect to them, even though they may involve some temporary difficulties in the early days of the new Constitution :—(1) that the "application" requirement should be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar and Orissa, the Central Provinces, and in urban areas in the United Provinces ; (2) that in Bombay, the Central Provinces, the United Provinces, the Punjab, and Assam a literacy qualification should be substituted as the educational qualification , (3) that in every Province, subject, however, to further consideration in the case of the North West Frontier Province, the wives of men with the military service qualification for the vote, and pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces should be enfranchised, registration in this case being on application only , and (4) that in cases in which registration will still be only on application steps should be taken to mitigate the deterrent effect of this requirement on the registration of votes by women, e g by allowing women to make application by letter (responsibility for satisfying the registering officer of their eligibility for enrolment resting with the applicant), by permitting application by the husband (subject to suitable penalties in the event of false statements, etc) on behalf of a wife, and by the entry of a woman's name as " wife of A B C " in cases in which, for social or religious reasons, there is any objection to the entry of the actual name on the electoral roll

Recommendations with regard to women's franchise

136 Before leaving this subject we wish to place on record our view that it is important to attain at as early a date as possible, and if practicable before the second election under the new Constitution, the ratio of not less than approximately one woman to five men electors, save possibly in Bihar and Orissa, which was recommended by the Indian Franchise Committee We understand that in most Provinces under the proposals embodied in the White Paper, with the modifications proposed by us above, the ratio of women to men eligible to exercise the franchise will be higher than 1 5 , but the deterrent effect of the " application " requirement, so long as it is necessary to retain it, particularly in the case of women qualified in

respect of a husband s property, is likely in practice to produce a much less favourable ratio of women to men on the electoral registers. In certain Provinces moreover the ratio even of women eligible to vote to men may apparently be less favourable than 1 5 The remedy for this situation is in our opinion the withdrawal of the application requirement at any rate in the case of wives or widows *qualified in respect of a husband s property* at as early a date as practicable with a consequent increase in the number of women on the electoral roll We are in favour also of the lowering of the educational standard for women to literacy in those Provinces in which a higher standard is now proposed before the second election under the new Constitution this should result in the Provinces in question in a further increase in the number of women eligible to exercise the franchise.

The educational qualification for men.

137 The Franchise Committee recommended the adoption of the Upper Primary Standard as a general educational qualification for men The White Paper substitutes a higher standard in certain Provinces It has been represented to us that the adoption of a high educational qualification and in particular of the matriculation standard would have an unfortunate result on male education and would discriminate against the boy attending the vernacular middle school in favour of the boy matriculating in the secondary school. We think this objection has considerable force It may be impossible at the present moment for some Provinces to adopt as some other Provinces propose to do so low a standard as the completion of the fourth class of the primary school or even the leaving examination of a middle school partly owing to lack of records and partly owing to the number of persons who would thus be enfranchised. But we think that it should be open to the Provincial Government to prescribe at least any middle school certificate as the qualification for the suffrage

Election expenses and corrupt practices, etc.

138 We desire in conclusion to draw attention to the question of election expenses and corrupt practices The White Paper proposes that save as otherwise provided in the Constitution Act itself the Provincial Legislatures should be empowered to make provision for matters connected with the conduct of elections but that until they do so existing laws or rules including laws or rules providing for the prohibition and punishment of corrupt practices or election offences, should remain in force. The Statutory Commission observed that they had no wish to over-emphasise but that they could not disregard the indications to them in more Provinces than one of the presence and effects of corruption and they urge therefore that

suitable limits should be defined and enforced for election outlay, the existing law being in their opinion inadequate.[1] We think that this is a matter which may properly engage the attention of His Majesty's Government, and it may be thought desirable that the Constitution Act itself should embody provisions with regard to it. We desire to add in this connection that it would, in our opinion, be unwise to abandon, as the White Paper proposes, the disqualification for candidature for a legislative body which under existing Rules follows (subject to a dispensing power) upon conviction for a criminal offence involving a sentence of imprisonment exceeding one year.

Future extension of franchise.

139. The question of a future extension of franchise is one which cannot be divorced from the question of other amendments of the Constitution Act. We do not therefore discuss it in this place and reserve our observations for a later part of our Report, in which the whole problem of what may conveniently be called Constituent Powers is considered.[2]

Powers of Provincial Legislatures

Powers of Provincial Legislatures.

140. We have referred elsewhere to the Lists in Appendix VI of the White Paper, which set out the subjects with respect to which the Provincial Legislatures will have the power of making laws for the peace and good government of the Province, an exclusive power in one case (List II) and in the other a power exercisable concurrently with the Federal Legislature (List III), and further discussion of them is unnecessary here. Certain restrictions on these legislative powers are however proposed. In the first place the Provincial Legislatures will not be competent to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army, Air Force, and Naval Discipline, Acts, or the Constitution Act itself, save in the last case in so far as the Constitution Act otherwise provides.[3] Few, if any, of these subjects are likely to come within the scope of the legislative powers of the Provincial Legislatures, as defined by Lists II and III, and the restriction is therefore more apparent than real, though we agree that it is a proper one. The Legislatures will also have no power to make certain laws of a

[1] Report, Vol II, para. 110.
[2] *Infra*, paras. 374–381.
[3] White Paper, Proposals 119–120.

discriminatory kind a subject which it will be more convenient to discuss later[1] Secondly the consent of the Governor General given at his discretion will be required to the introduction in a Provincial Legislature of legislation which (1) repeals amends or is repugnant to any Act of Parliament extending to British India or any Governor General s Act or Ordinance or (2) which affects any Department reserved to the control of the Governor General or (3) which affects the procedure regulating criminal proceedings against European British subjects Thirdly the consent of the Governor given at his discretion will be required to the introduction of legislation (1) which repeals amends or is repugnant to a Governor s Act or Ordinance or (2) which affects religion or religious rites and usages.

Modification of the White Paper proposals recommended.

141 We do not think that the consent of the Governor should any longer be required to the introduction of legislation which affects religion or religious rites and usages We take this view not because we think that in practice the necessity for such consent might prejudice attempts to promote valuable social reforms which has been suggested as a reason for dispensing with it but because in our judgment legislation of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers We have given our reasons elsewhere for holding that matters of social reform which may touch directly or indirectly Indian religious beliefs can best be undertaken with prospect of success by Indian Ministers themselves and that being so we think it undesirable that their responsibility in this most important field should be shared with a Governor It has been represented to us that the removal of the safeguard of the Governor s previous sanction may operate to the disadvantage of small minorities such as the Indian Christians who would not be in a position to make effective their objections to legislation which they regarded as prejudicial. But we do not think that the recommendation we have just made is in fact open to this criticism The Governor could always prevent the introduction or secure the withdrawal of any legislative proposal by his Ministers which he regarded as inconsistent with the discharge of his special responsibility for the protection of minorities and he would in addition be free as indicated in the next paragraph to refuse his assent to any Bill which had been passed by the Legislature if in his opinion it were undesirable on any ground that it should become law It would also be open to him to intimate to the Legislature by

[1] *Infra* paras 342 *et seq*

Message or otherwise the attitude which he felt bound to take to any proposal under discussion to the extent even of making it clear that he would be unable to accord his assent to the proposal if the Legislature were to pass it. It has further been objected that the mere introduction of legislation affecting religion or religious rites and usages might be dangerous at times of religious or communal disturbance, and might indeed itself produce such disturbance. We observe, however, a Proposal in the White Paper[1] whereby the Governor would be empowered, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with. We understand that this proposal is, in fact, intended to meet precisely such a situation as that just indicated—namely a situation in which the mere discussion of a question in the Legislature might itself so disturb public opinion as to give rise to disorder We entirely concur that the Governor should possess such a power, but we think that his Instrument of Instructions should make quite clear the purpose for which it is designed, namely, that it is not primarily intended as a safeguard against the passing into law of a measure which the Governor considered dangerous to peace and tranquillity. For this purpose the safeguard is the power of withholding assent.

Acts of Parliamen extending to India

142 We had also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor-General to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law of India is the work of Indian legislative bodies and that there are, in fact, very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have no power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the Provincial sphere. In these circumstances we think that the proposal should stand; but the Governor's Instrument of Instructions should direct him to reserve Bills which appear to him to fall within this category

Governor's assent to Bills.

143 The proposals with regard to the Governor's assent to Bills are in standard constitutional form[2] They provide that the Governor may at his discretion either assent to a Bill, or refuse his assent, or may reserve the Bill for the consideration of the Governor-General, who may in his turn either assent or withhold his assent or reserve the Bill for the signification of His Majesty's pleasure; we regard this discretionary power as a real one to be used whenever necessary. We note a proposal whereby the Governor would be empowered to return a Bill to the Legislature for reconsideration in whole or in part, together with such amendment, if any, as he may

[1] White Paper, Proposal 94.
[2] White Paper, Proposal 88

recommend A provision of this kind (which has Dominion as well as Indian precedent in its favour) may we think, prove extremely useful for the purpose of avoiding or mitigating a conflict between the Governor or perhaps the Governor and his Ministers and the Legislature and will afford opportunities for compromise which would not otherwise be available

xcluded reas.

144 It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an Excluded Area' or a Partially Excluded Area. In relation to the former the Governor will himself direct and control the administration in the case of the latter he is declared to have a special responsibility In neither case will any Act of the Provincial Legislature apply to the Area unless by direction of the Governor given at his discretion with any exceptions or modifications which he may think fit The Governor will also be empowered at his discretion to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. We have already expressed our approval of the principle of Excluded Areas and we accept the above proposals as both necessary and reasonable [1] so far as the Excluded Areas proper are concerned. We think however that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas and that the application of Acts to or the framing of Regulations for Partially Excluded Areas is an executive act which might appropriately be performed by the Governor on the advice of his Ministers the decisions taken in each case being of course subject to the Governor s special responsibility for Partially Excluded Areas that is to say being subject to his right to differ from the proposals of his Ministers if he thinks fit

Procedure in the Legislatures

Ordinary procedure

145 We approve the proposals in the White Paper that the power to summon and appoint places for the meeting of the Provincial Legislature and the power of prorogation and dissolution shall be vested in the Governor at his discretion. It is rightly proposed that the Provincial Legislature itself shall have ample power to regulate its own procedure and business but we note with approval that the Governor is to be empowered at his discretion after consultation with the presiding officer of the Legislature to make rules regulating procedure and the conduct of business in relation to matters arising out of or affecting any of his special responsibilities and that any rules made by him for this purpose will prevail over any rule made by the Legislature itself which may conflict or be inconsistent with them [2]

Financial procedure.

146 The proposals with regard to financial procedure seem to us generally to be well considered. They are based upon the principle which must always be the foundation of any sound system of public

[1] White Paper Proposal 108

[2] White Paper Proposal 102.

finance, that no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues, can be made without the recommendation of the Governor; that is to say, it can only be made on the responsibility of the Executive.[1] We understand that, apart from this, legislative procedure in matters of finance differs in India from that which exists in the United Kingdom. There is, for example, no annual Appropriation Act in India, the proposals for the appropriation of revenue which require a vote of the Legislature being submitted to the Legislature in the form only of Demands for Grants, and a resolution of the Legislature approving a Demand is sufficient legal warrant for the appropriation. No substantial alteration in this system is suggested in the White Paper, and, though we have given some consideration to the matter, we are satisfied that no good reason has been shown for modifying in the new Constitution Act a system with which Indians are familiar and which appears to have worked sufficiently well in practice. We assume, of course, that, as at present, the Governments in India will, within limits, continue to possess powers of " virement " or reappropriation.

Annual proposals for appropriation of revenue.

147. The proposals for the annual appropriation of revenue will, according to the White Paper, be grouped in three categories[2]: (1) those which will not be submitted to the vote of the Legislature, though (with one exception) they will be open to discussion; (2) those which will be so submitted; and (3) proposals, if any, which the Governor may regard as necessary for the fulfilment of any of his special responsibilities. The importance of those which fall into the first category makes it desirable that we should set them out in full, and they are as follows:—

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service, and management of loans; expenditure fixed by or under the Constitution Act; expenditure required to satisfy a decree of any Court or an arbitral award;

(ii) The salary and allowances of the Governor (these will not be open to discussion); of Ministers; and of the Governor's personal or secretarial staff;

(iii) The salaries and pensions, including pensions payable to their dependants, of Judges of the High Court or Chief Court or Judicial Commissioners; and expenditure certified by the Governor, after consultation with his Ministers, as required for the expenses of those Courts;

(iv) Expenditure debitable to Provincial revenues required for the discharge of the duties imposed by the Constitution Act on the Secretary of State;

(v) The salaries and pensions payable to, or to the dependents of, certain members of the Public Services and certain other sums payable to such persons.

[1] White Paper, Proposal 95.
[2] White Paper, Proposals 95–100.

Non-votable Heads of Expenditure

148 It will be observed that most of these Heads of Expenditure are identical with or analogous to payments which would in the United Kingdom be described as Consolidated Fund charges and as such would not be voted annually by Parliament. The two principal exceptions are the salaries of Ministers and the salaries and pensions payable to certain members of the Public Services or to their dependants. We think the inclusion of Ministers salaries is justified. The convention in this country whereby a motion for a nominal reduction in the salary of a Minister has become a convenient method of criticizing a Department or ventilating grievances appears not to have established itself in India. On the contrary Legislatures have been known to mis-use their powers in such a way as to deprive Ministers of the whole of their salaries and have thus rendered it impossible for the Governor to have not only the Ministry of his choice but any Ministry at all a notable example of the way in which the exercise of its powers by a Legislature may by constitutional usage be made to serve a valuable purpose in one country and yet prove wholly destructive in another We therefore approve the proposal in the White Paper and we are of opinion that ample and no less convenient opportunities for criticizing the Executive will still remain. The non-votable character of salaries and pensions payable to members of the Public Services raises questions of a different kind which we propose to consider later [1] The separate specification of the proposals regarded by the Governor as necessary for the fulfilment of his special responsibilities calls for no comment In one respect however we think the list is defective The administration of Excluded Areas is a matter which will be the exclusive responsibility of the Governor and following the analogy of the Governor-General s reserved departments we think that the expenditure required for these areas whether derived from Provincial or Central revenues should not be subject to the vote of the Provincial Legislature

System of Demands for Grants

149 All proposals for appropriation other than those relating to the heads of expenditure enumerated above will be submitted to the Legislature in the form of Demands for Grants and the Legislature will have the right to assent to or reduce or to refuse assent to any Demand including those which the Governor has proposed as necessary for the fulfilment of his special responsibilities. Except in the latter case (the Governor being empowered to restore any such Grants if he thinks it desirable to do so) the decision of the Legislature is final and it is this power in the matter of supply which will give the Legislature its real control over the Executive We have already discussed the difficulties which may arise if that power is factiously or irresponsibly exercised and it is not necessary to repeat what we then said. It has been objected that the Heads of Expenditure which will not be subject to the vote of but only open to discussion by the Legislature are so extensive as materially

[1] *Infra* paras. 274 *et seq*

to diminish the field of responsible government in the Province We are satisfied that there is little, if any, substance in this objection. Most of the Heads of Expenditure, as we have pointed out, would not, even in the United Kingdom, be the subject of an annual vote by Parliament , and the inclusion of those which do not fall within that category is for reasons which we have given elsewhere clearly justified as a matter of reasonable precaution, if responsible government itself is to be a reality in the future

Powers of Legislative Councils and conflicts between the two Chambers

150 It is proposed that, in those Provinces where the Legislature is bicameral, Money Bills shall be initiated in, and Demands for Grants submitted to, the Legislative Assembly alone [1] We think that this is right, and that, both in respect of financial powers and generally, the Legislative Council should not be regarded in any sense as a body having equal powers with the Legislative Assembly, but rather a body with powers of revision and delay, for the purpose of exercising a check upon hasty and ill-considered legislation Nevertheless, the possibility of a conflict between the two Chambers cannot be disregarded The method proposed by the White Paper for resolving such a conflict is to give the Governor the power, after a lapse of three months to summon the two Chambers to meet in a Joint Session for the purpose of reaching a decision on any legislation which has been passed by one Chamber but rejected by the other, the Bill being taken to have been duly passed by both Chambers if approved by a majority of the members voting at the Joint Session We do not think that this is a satisfactory solution The period of three months is too short, and would make the powers of the Legislative Council derisory , it ought in our opinion to be one of twelve months at least It may be urged that the sessions of the Provincial Legislatures will be comparatively short and that it is never likely in practice that the period of delay will be only three months , but we regard the difference as one of principle The case of a Bill on which, in the Governor's opinion, a decision cannot, consistently with the fulfilment of his special responsibilities or with the necessary financing of the Provincial Administration, be deferred is on a different footing , and we agree that in this case the Governor must himself be empowered to summon forthwith a Joint Session It seems to us also that, in view of the relative powers of the two Chambers, a Bill introduced in the Legislative Council but rejected by the Legislative Assembly should lapse, and that the machinery of a Joint Session should be confined to the converse case, and should be put in motion only if the Legislative Assembly so desires There should be no possibility of further amendment in the Joint Session, save for amendments relevant to the points of difference which have arisen between the two Chambers, and the decision of the Presiding Officer, who will presumably be the President of the Upper Chamber, on the admissibility of any amendment should be final and conclusive

[1] White Paper, Proposal 91

APPENDIX (I)

Composition of Provincial Legislative Councils

		Bengal	*Bihar*	*Bombay*	*Madras*	*United Provinces*
Nominated by the Governor in his discretion —						
Not less than		6	3	3	8	6
Not more than		8	4	4	10	8
General	Directly elected.	10	9	20	35	34
Muhammadan	Directly elected.	17	4	5	7	17
European	Directly elected.	3	1	1	1	1
Indian Christians	Directly elected.	—	—	—	3	—
Elected by the method of the single transferable vote by members of the Provincial Lower House		27	12	—	—	—
Total—						
Not less than		63	29	29	54	58
Not more than		65	30	30	56	60

The members directly elected will be elected from communal constituencies.

The franchise will be based on high property qualifications, or a qualification based on service in certain distinguished public offices, as is proposed in Appendix V Part II, of the White Paper

The qualifications above indicated will also apply to candidates, but special provisions may be necessary in the case of women and the Depressed Classes.

SECTION III

THE FEDERATION

Federation and the Crown

Federal Union of States and Provinces.

151 We pass next to the proposal in the White Paper to create a new polity in which both the British India Provinces and the Indian States will be federally united We have already given our reasons for approving this proposal in principle and have pointed out that it involves two distinct operations, the one a necessary consequence of the grant of Provincial Autonomy to British India, the other the establishment of a new relationship between British India and the Indian States It only remains for us to consider the method by which each of these two operations is to be carried out.

Existing distribution of authority in British India.

152 The dominion and authority of the Crown extends over the whole of British India and is exercised subject to the conditions prescribed by the existing Government of India Act It is derived from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in rights based upon conquest, cession or usage, some of which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company The Secretary of State is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India, and for the exercise also of certain authority which he derives directly from powers formerly vested in the Court of Directors and the Court of Proprietors of the East India Company, whether with or without the sanction of the body once known as the Board of Control The superintendence, direction and control of the civil and military Government of India is declared by the Government of India Act to be vested in the Governor-General in Council, and the government or administration of the Governors' and Chief Commissioners' Provinces respectively in the local governments, but powers of superintendence, direction and control over " all acts, operations and concerns which relate to the government or revenues of India " are, subject to substantial relaxation in the transferred provincial field, expressly reserved to the Secretary of State, and whether the Governor-General in Council exercises (though no doubt under the general control of the Secretary of State) original powers of his own, or is only the agent and mouthpiece of the Secretary of State, remains perhaps an open question It is one which has been the subject of dispute in the past between Secretaries of State and the Governor-General, but the spheres of their respective jurisdictions are now well recognised, and the Secretary of State, though maintaining his powers of control, does not in practice exercise any powers of direct administration, a result to which the increasing authority of the Indian Legislature has no doubt materially contributed.

Legal basis of new Federal Constitution.

153 It is clear that in any new Constitution in which autonomous Provinces are to be federally united under the Crown not only can the Provinces no longer derive their powers and authority from devolution by the Central Government but the Central Government cannot continue to be an agent of the Secretary of State Both must derive their powers and authority from a direct grant by the Crown We apprehend therefore that the legal basis of a reconstituted Government of India must be first the resumption into the hands of the Crown of all rights authority and jurisdiction in and over the territories of British India whether they are at present vested in the Secretary of State the Governor-General in Council or in the Provincial Governments and Administrations and second their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other A Federation of which the British Indian Provinces are the constituent units will thereby be brought into existence

Accession of States to Federation a voluntary act.

154 The rights authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State [1] It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler The Constitution Act cannot itself make any Indian State a member of the Federation it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned Their Rulers can enter or stand aside from the Federation as they think fit They have announced their willingness to consider federation with the Provinces of British India on certain terms but whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves

Rulers Instruments of Accession

155 It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession[2] and this Instrument (whatever form it may take) will we assume enable the powers and jurisdiction of the Ruler in respect of those matters which he has agreed to recognise as Federal subjects to be exercised by the Federal authorities brought into existence by the Constitution Act that is to say the Governor General the Federal Legislature and the Federal Court but strictly within the limits defined by the Instrument of Accession Outside

[1] The relations between the Crown as Paramount Power and the States are the subject of treaties and engagements of various kinds. For details *see* Aitchison's Treaties, Engagements and Sanads 1929 published by the Government of India.

[2] White Paper Proposals 2–3

these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. The list of exclusively federal subjects is set out in List I of Appendix VI to the White Paper, to which we have already drawn attention, and we understand the hope of His Majesty's Government to be that Rulers who accede will in general be willing to accept items 1 to 48 of List I as federal subjects We have indicated our view that the Lists in Appendix VI require some modification, a matter with which we deal hereafter; and, therefore, though we speak of items 1 to 48, we do not wish to be understood as necessarily implying that we accept all these items as appropriately falling within the federal sphere, so far as regards the Indian States, or that we think that the definition of some of them is not susceptible of improvement. Subject to this, it is convenient to consider the questions which arise in connection with the Instrument of Accession on the basis of the White Paper proposal, with the explanations which have been given to us on behalf of His Majesty's Government

Instruments should, so far as possible, follow a standard form.

156 It would, we think, be very desirable that the Instruments of Accession should in all cases be in the same form, though we recognise that the list of subjects accepted by the Ruler as Federal may not be identical in the case of every State Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws, and the Federal Court may be called upon to pronounce upon them; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments Next, we think that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to except, or to reserve, subjects which appear in what we may perhaps describe as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example in connection with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation , but in our judgment it is important that deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course We do not need to say that the accession of all States to the Federation will be welcome ; but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable.

ccession of ufficient umber States condition recedent to ederation.

157 We regard the States as an essential element in an All India Federation but a Federation which comprised the Provinces and only an insignificant number of the States would scarcely be deserving of the name This is recognised in the White Paper where it is proposed that the Federation shall be brought into existence by the issue of a Proclamation by His Majesty but that no such Proclamation shall be issued until the Rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber have signified to His Majesty their desire to accede to the Federation [1] We accept the principle of this proposal. We observe also that it is proposed that both Houses of Parliament should first present an Address to His Majesty praying that the Proclamation may be issued. We approve this proposal because Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede but also that the financial economic and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis have been fulfilled This is a matter which we discuss more fully in a subsequent part of our Report and it is unnecessary to do more than allude to it here [2] We note also in passing that the establishment of Autonomy in the Provinces is likely to precede the establishment of the Federation but in our judgment it is desirable if not essential that the same Act should lay down a Constitution for both in order to make clear the full intention of Parliament.

Differentiation of unctions of Governor eneral and Viceroy

158 We have spoken above of the rights authority and jurisdiction of the Crown in and over the territories of British India. But the Crown also possesses rights authority and jurisdiction elsewhere in India including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown under the general control of the Secretary of State by the Governor-General in Council and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they cannot under the new Constitution be exercised on behalf of the Crown by any federal authority save in so far as they fall within the federal sphere and only then when they affect a State which has acceded to the Federation The White Paper proposes that (subject to the exception which we have mentioned) they should in future be exercised by the representative of the Crown in his capacity as Viceroy and that in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy [3] We agree with what we conceive to be the principle underlying this proposal but we are not clear that the method employed to give effect to it is entirely appropriate We agree that there must

[1] White Paper Proposal 4
[2] *Infra* para 273
[3] White Paper Introd., para. 10

be a legal differentiation of functions in the future; and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose But we assume that the two offices will continue to be held by the same person, and, this being so, we think that the title of Viceroy should attach to him in his double capacity This suggestion involves no departure from the underlying principle of the White Paper that, outside the federal sphere, the States' relations will be exclusively with the Crown and that the right to tender advice to the Crown in this regard will lie with His Majesty's Government

The Area of Federal Jurisdiction

Area of Federation

159 The area of federal jurisdiction will extend in the first instance to the whole of British India, which comprises at the present time the Governors' Provinces and the Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and Aden [1] We give below our reasons for holding that Aden should henceforth cease to be part of British India As regards the States which have acceded to the Federation, the federal jurisdiction will extend to them only in respect of those matters which the Ruler of the State has agreed in his Instrument of Accession to accept as federal

Aden

160 The Settlement of Aden, which comprises the town of Aden itself and certain immediately adjacent districts, is at present administered by the Government of India as a Chief Commissioner's Province Responsibility for the hinterland of Aden, which is commonly known as the Aden Protectorate and which is not British territory, has since 1917 rested with His Majesty's Government, who have also since the same date been responsible for the military and political affairs of the Settlement Under arrangements reached in 1926, an annual contribution, subject to a maximum of £150,000, but which amounts at the moment only to some £120,000, is made from Indian revenues to military and political expenditure on the Settlement and the Protectorate The population of the Settlement is predominantly Arab, the Indian population, which is however of great commercial importance, numbering only about one seventh of the whole

Effect of constitutional proposals

161 Proposals for Indian constitutional reform inevitably necessitated consideration of the future position of Aden, and in particular of the question whether the Settlement could satisfactorily be included in the new arrangements, or whether it would not be preferable to transfer responsibility for its civil administration to His Majesty's Government, in whom military and political responsibility for the Settlement and complete responsibility for the affairs of the hinterland already vest We have received strong representations against any alteration in the status of Aden from important

[1] White Paper, Proposals 5, 56–60

and influential Indian interests On the other hand we have received representations in favour of transfer from the Arab population who appear to view with some apprehension the possibility that Aden may permanently remain a part of British India.

Its separation from British India recommended.

162 We recognise the natural reluctance of Indian opinion to sever a connection of almost a century s standing with an area the development of which is largely due to Indian enterprise and where much Indian capital is engaged But great importance must also be attached to the interests and the feelings of the Arab majority of the population of the Settlement We are impressed apart from this by the geographical remoteness of Aden from India by the difficulties of merging it satisfactorily in a new Indian Federation by the impracticability of a complete divorce between the civil administration of the Settlement on the one hand and political and military control of the Settlement and Protectorate on the other and by the anomaly of including in such new constitutional arrangements as may be approved for India an area predominantly Arab in population, already to some extent under Imperial control and in practice inseparable from the Aden Protectorate for which India has ceased to be in any way responsible The constitutionally anomalous position which would arise in regard to Defence if the present arrangements were allowed to continue under the new Constitution would be particularly marked. We appreciate moreover the force in the argument that it is desirable on general grounds given the importance of Aden from a strategic standpoint to the Empire in the East as a whole and not merely to any individual unit that its control should vest in the Home Government After full consideration we are of opinion that the administration of the Settlement of Aden should be transferred from the Government of India to His Majesty s Government not later than the date of the establishment of Federation In reaching this conclusion we have not ignored the apprehensions expressed by Indian interests connected with Aden as to the possible prejudicial effect of a transfer upon their position We have however ascertained that His Majesty s Government are prepared in the event of transfer not merely to relieve India of her annual financial contribution but to preserve a right of appeal in judicial cases to the Bombay High Court to maintain (in the absence of any radical change in present economic circumstances) the existing policy of making Aden a free port to do their utmost to keep the administration at its present standard and to impose no additional taxation unless in their opinion such a course is absolutely necessary They are further prepared to agree that a proportion of Indian Service personnel shall be retained for some years after the date of transfer; that no racial discrimination shall be permitted and that British-India subjects shall be allowed to enter the Protectorate under precisely the same conditions as any other British subjects. These assurances ought in our view adequately to meet the apprehensions to which we have referred above.

SECTION IV
THE FEDERAL CENTRE

Nature of the Fede[ral] Government

163 We come now to the proposals in the White Paper which relate to the Federal Government and Legislature[1] We have already given our reasons for accepting, in principle, the proposal of the White Paper that the Federal Government should be in some measure responsible to the Federal Legislature, but that this responsibility should not extend to all federal subjects This being accepted, much that we have said in connection with the Provinces applies equally to the Centre, but there are special problems connected with the latter for which there neither is nor can be any provincial counterpart The Federal Government will be the main point of contact between the Provinces and the Indian States which accede to the Federation, it will be the connecting link between all the constituent units as such, and there must exist at the Centre a residuary and ultimate responsibility for the peace and tranquillity of the whole of India The authority and functions of the Governor-General as the representative of the Crown assume in all these spheres a particular importance, especially in relation to defence and external affairs; and in connection with the latter subjects certain problems associated with a dyarchical system have to be examined. We propose to consider, first, the Federal Executive and the Federal Legislature and the relations between the two, and, secondly, the relations between the Federation and its constituent units, that is, the Provinces and those Indian States which have become members of the Federation

(1) THE FEDERAL EXECUTIVE

The present Executive in India

164 The present executive authority in India, both in civil and in military matters, is the Governor-General in Council The members of the Governor-General's Executive Council, of whom not less than three must be persons who have been for at least ten years in the service of the Crown in India, are appointed by the Crown, and their appointments are in practice for a term of five years, though there is no statutory limit The Commander-in-Chief is ordinarily, though not necessarily, a member of the Council, and in that case has rank and precedence next after the Governor-General himself The present Council consists of six members (of whom three are Indians), in addition to the Governor-General and the Commander-in-Chief The Governor-General presides at meetings of his Council, and the decision of the majority of those present prevails, though the Governor-General has a casting vote in the event of an equality of votes, and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India, or any part thereof, over-rule the Council The three members of the Council who are required to have been in the service of the Crown in India are almost invariably selected from the Indian Civil Service, the post of Law

[1] White Paper, Proposals 6–55

Member has for some years past been filled by an Indian lawyer and that of Finance Member by a person with financial experience from the United Kingdom An official is not qualified for election as a member of either Chamber of the Central Legislature and if any non-official member of either Chamber accepts office under the Crown in India his seat is vacated but every member of the Governor General s Council becomes an ex-officio member of one of the Chambers and has the right of attending and addressing the other though he cannot be a member of both. The Executive Government is not responsible to the Indian Legislature but only to the Secretary of State and thus to Parliament and the Governor-General in Council if satisfied that any Demand for supply which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities can act as if it had been assented to notwithstanding the refusal of the Demand or any reduction in its amount by the Legislative Assembly The Governor General himself has also power in case of emergency to authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of British India, or any part thereof These provisions secure the complete independence of the Executive though the Legislature can and does exercise an influence upon policy in a marked and increasing degree

Executive power and authority of Federation to be vested in Governor General.

165 The White Paper proposes that as in the case of the Governor in a Province the executive power and authority of the Federation shall vest in the Governor-General as the representative of the King [1] This power and authority will be derived from the Constitution Act itself but the Governor-General will also exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him The former is to include the supreme command of the military naval and air forces in India but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such powers and functions as may be assigned to him. In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession It is then proposed that there shall be a Council of Ministers [2] chosen and summoned by the Governor-General and holding office during his pleasure to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence external affairs[3] and ecclesiastical affairs (2) the administration of British Baluchistan

[1] White Paper Proposal 6

[2] White Paper Proposal 13

[3] This term does not, of course include relations with the Indian States in matters in which they have not agreed to federate such matters will be dealt with personally by the Viceroy as representative of the Crown. It follows from this that any State matter which a Ruler has not accepted as Federal in the case of his State will not be subject to discussion in the Federal or a Provincial Legislature unless the Governor-General or the Governor considers that British India interests are affected

and (3) matters left by the Act to the Governor-General's discretion [1] In respect of certain specified matters the Governor-General, like the Governor of a Province, is declared to have a "special responsibility", and his Instrument of Instructions will direct him to be guided by the advice of his Ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered [2] It is hardly necessary to add that Ministers will not be concerned with the appointment of the Governor-General himself

Introduction of responsib governme

166 It will be seen that the White Paper proposals are the same *mutatis mutandis* for the Federal, as they are for the Provincial, Executive It is not therefore necessary for us to repeat what we have already said on the subject, and especially on the importance which will attach to the Governor-General's Instrument of Instructions The Instrument will direct him to appoint as his Ministers those persons who will best be in a position collectively to command the confidence of the Legislature, [3] and this direction, taken in conjunction with the proposals which we have set out, is, as we have said elsewhere, the correct constitutional method of bringing into existence a system of responsible government We observe that Ministers are to advise the Governor-General in the exercise of the powers conferred on him by the Constitution Act (other than powers relating to the subjects which we have mentioned above), and we assume therefore that they will not be entitled to advise him in the exercise of any prerogative powers of the Crown which may be delegated to him, presumably in the Letters Patent constituting the office We are of opinion that this is a proper distinction to draw, and that Ministers should not, for example, have the right to advise on the exercise of such a prerogative of His Majesty as the grant of honours, if His Majesty should be pleased to delegate a limited power for that purpose There is no interference here with the principle of responsible government, for it is not proposed that His Majesty should be empowered to delegate any powers which are inconsistent with the Act

Special questions connectio with the Federal Executive

167 We pass to a consideration of some special questions which arise in connection with the Federal Executive, and they may conveniently be discussed under the following heads:—

(i) The nature of the Governor-General's special responsibilities,

(ii) the Reserved Departments,

(iii) the Governor-General and the Federal Administration,

(iv) the Governor-General's Special Powers

[1] White Paper, Proposals 5, 11 and 13
[2] White Paper, Proposal 21
[3] White Paper, Proposal 14

(i) *Nature of the Governor-General's Special Responsibilities*

168 The White Paper defines the matters in respect of which the Governor-General is declared to have a special responsibility in the following terms —(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof (*b*) the safeguarding of the financial stability and credit of the Federation (*c*) the safeguarding of the legitimate interests of minorities (*d*) the securing to the members of Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests (*e*) the prevention of commercial discrimination (*f*) the protection of the rights of any Indian State (*g*) any matter which affects the administration of any department under the direction and control of the Governor General.

169 All that we have said on (*a*) in relation to the Governor of a Province applies with equal if not greater force in the case of the Governor-General and we have little to add to it. The Governor General, as the authority in whom the exclusive responsibility for the defence of India is vested must necessarily be free to act, according to his own judgment where the peace or tranquillity of India or any part of India is threatened even if he finds himself thereby compelled to dissent from the advice tendered to him by his Ministers within their own sphere

170 Federal Ministers will under the White Paper proposals become responsible for finance but (to quote the Second Report of the Federal Structure Committee of 13th January 1931) it is recognised to be ' a fundamental condition of the success of the new Constitution that no room should be left for doubts as to the ability of India *to maintain her financial stability and credit both at home and* abroad and that it is therefore necessary to reserve to the Governor General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would in his opinion seriously prejudice the credit of India in the money markets of the world To this we might add that the grave responsibilities which attach to the Governor General in the matter of defence afford a further and no less cogent reason. In our opinion though the expression budgetary arrangements and borrowing indicates generally the sphere in which it is desirable that the Governor-General should have power if necessary to act it would be unwise to attempt to define this special responsibility in more precise terms than are proposed in the White Paper Any further directions for the guidance of the Governor General would find a more appropriate place in his Instrument of Instructions as indeed the Joint Memorandum of the British India Delegation suggests The White Paper also proposes rightly in our opinion that the Governor General should be empowered in his discretion but after consultation with his Ministers to appoint a Financial

Adviser to assist him in the discharge of this special responsibility[1] The British-India Delegation concur, provided it is made clear that the Financial Adviser is not intended to interfere in the day to day administration of financial business; and they suggest indeed that it would be an advantage if he were designated the Adviser to the Ministry as a whole as well as to the Governor-General We think that he must be regarded technically as the Governor-General's adviser, but his advice ought to be available to Ministers and we hope that they will freely consult him We have no doubt that the Governor-General will always endeavour to secure the appointment of a person acceptable to his Ministers, for since we may assume that he will be a person selected not only by reason of his financial qualifications but also for his tact and commonsense, the value of his services would in our judgment be no less diminished if he held himself aloof from Ministers than if he sought to interfere in matters outside his proper functions We think that such an adviser, if the right selection is made, may prove of the greatest assistance both to the Governor-General and to Ministers, and that the more successful he is in the performance of the duties attaching to his office, the less likelihood will there be of the necessity arising for the exercise by the Governor-General of his special power in the financial field.

Responsibility for protecting the rights of Indian States.

171 We have nothing to add to what we have already said with regard to the special responsibilities specified under (*c*), (*d*) and (*e*) As regards (*f*), "the protection of the rights of any Indian State," we have already expressed the view that this special responsibility only applies where there is a conflict between rights arising under the Constitution Act and those enjoyed by a State outside the Federal sphere It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States, but his special responsibility must necessarily arise in the first capacity only, his action in the second capacity being untouched in any way by the Constitution Act The responsibility specified in (*g*) calls for no comment, since it is plain that the Governor-General must be free to exercise his own judgment in any matter which affects the administration of any of the reserved departments, even though it arises primarily within the ministerial sphere

(ii) *The Reserved Departments*

The Reserved Departments and the Governor-General's Counsellors

172 The White Paper proposes that the Governor-General shall himself direct and control the administration of the Departments of Defence, External Affairs and Ecclesiastical Affairs,[2] these

[1] White Paper, Proposal 17

[2] White Paper, Proposal 11 It is also proposed that the Governor-General shall himself direct and control the administration of British Baluchistan (White Paper, Proposal 5), but there will not be a Reserved Department of British Baluchistan, which will be a Chief Commissioner's Province and will be in no different position from other Chief Commissioners' Provinces, except that Ministers will not advise the Governor-General in relation to its administration

matters will therefore remain outside the ministerial sphere and the Governor General s responsibility with respect to them will be to the Secretary of State and thus ultimately to Parliament. The Governor-General could not it is plain undertake in person so great an administrative burden and it is therefore proposed that he should be assisted by not more than three Counsellors who will be appointed by him and whose salaries and conditions of service will be prescribed by Order in Council [1] Since also it is necessary that the Governor General should have a spokesman in the Legislature on matters connected with the Reserved Departments each Counsellor will be ex-officio an additional member of both Chambers of the Legislature for all purposes though without the right to vote and we think that there should be no restriction on his right to take part in any of the debates in the Legislature if he desires to do so

Defence

The Statutory Commission on the Army in India.

173 The Department of Defence is a cardinal Department for it is responsible for the defence of India in all its aspects whether concerned with internal security or with protection from foreign invasion The sober and impressive chapter on the Army in India which forms part of the Statutory Commission s survey makes it unnecessary for us to discuss in any detail the difficulties and complexities of this vital subject in its relation to India and we do not desire either to add to or qualify their presentation of the problem [2] Their investigation led them indeed to a conclusion which differs in its constitutional aspect from our own but on the facts of the matter we find ourselves in complete agreement with them

e Com ssion s om ndation

174 The Commission convinced that dyarchy in the Central Government was wholly inadmissible inquired whether any other plan was feasible which would provide adequately for the needs of Indian defence and offer at the same time an earlier prospect for further constitutional advance and they suggested as the only possible answer that the protection of the Indian frontiers should not at any rate for a long time to come be regarded as a function of an Indian Government in relation with an Indian Legislature but as a responsibility to be assumed by the Imperial Government [3] This plan has not we think, found advocates even among those who would be prepared to assent generally to the recommendations of the Commission and it seems to us to avoid the difficulties of one kind of dyarchy by creating what is in substance if not in form another We are unwilling for reasons which we have already given that the problem of defence should for ever bar the way to any form of responsibility at the Centre and if this be granted some form of dyarchy with all its admitted disadvantages is as we have already

[1] White Paper Proposal 12.
[2] Report, Vol. I paras 111-126
[3] Report, Vol II, paras. 195-215

pointed out, inevitable, but the form adopted must be such that in the sphere of defence the Governor-General's responsibility will remain undivided and unimpaired and that the Department of Defence will be under his exclusive direction and control. It should be remembered also that it is through this agency that the obligation will be discharged which the Crown has assumed for the protection, whether externally or internally, of the States Responsible British-India opinion does not deny the necessity for the reservation, though the Joint Memorandum of the British-India Delegation seeks to add certain qualifications, to which we shall refer later, and we proceed therefore to a consideration of some of the more important questions which it involves

Relations between Department of Defence and other Departments

175 No Department of Government can be completely self-contained, and a Department of Defence is no exception to the rule Its administration does not indeed normally impinge upon the work of other Departments, save in time of war or other grave emergency, but its policy and plans may be greatly influenced by theirs, and by the knowledge that it is able to rely upon their co-operation at moments of crisis It is vital, therefore, that where defence policy is concerned the Department should be able to secure that its views prevail in the event of a difference of opinion The special responsibility which it is proposed that the Governor-General shall have in respect of any matter affecting the administration of the Departments under his direct control will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy, and he will also be able to avail himself of the power which the Federal Government will possess to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a Federal subject, since defence is none the less a Federal subject because reserved Thus the maintenance of communications, especially on mobilisation, is a vital military necessity, and the Governor-General must have power in case of need to issue directions to the Railway Authority, or to require the Minister in charge of communications to take such action as the Governor-General may deem advisable In the provincial sphere questions may arise with regard to the control of lands, buildings or equipment maintained or required by the Department, or with regard to such matters as facilities for manœuvres or the efficiency and well-being of defence personnel stationed in provincial areas, or, in times of emergency, with regard to the guarding of railways and bridges, and the like In frontier areas, and especially in the North West Frontier Province, special measures may have to be taken in certain circumstances to control the movement of persons and goods In all matters of this kind where there is a difference of opinion with other authorities, the final responsibility for a decision, if defence policy is concerned, must rest with the Governor-General, his views must prevail, and he must have adequate means of giving effect to them

Co-operation essential

176 It may be assumed that in practice, the willing co-operation of the other Departments of Government will render unnecessary any recourse to these special powers and we should view with dismay the prospects of any new Constitution if the relations between the ministerial and the reserved Departments were conducted in an atmosphere of jealousy or antagonism But though the influence of the Governor-General will no doubt always be exerted to secure co-ordination and harmony it may well be that some permanent co-ordinating machinery will be desirable The British India Joint Memorandum suggests a statutory Committee of Indian Defence constituted on the lines of the Committee of Imperial Defence but we are not sure that its authors fully appreciate the position and functions of the latter since it is not a statutory body and its value is perhaps increased by the elasticity of its constitution We are disposed to think that a body with statutory powers and duties might embarrass the Governor-General and even be tempted to encroach upon his functions An advisory body similar to the Committee of Imperial Defence constituted at the Governor General s discretion would not be open to that criticism and might we think have many advantages. It has been urged upon us that in order to build up an informed opinion upon defence questions a statutory Committee of the Legislature should be established We understand that outside the formal opportunities of discussing defence questions on such occasions as the Army Budget opportunities are already given to members of the Legislature to inform themselves upon Army questions and provided that the extent and methods of consultation are clearly understood to rest in the discretion of the Governor-General we see no objection to the formation of any Committee or Committees that the Federal Government and Legislature may consider useful. We feel however that this is essentially a question to be settled by them and not by the Constitution Act.

Suggestions of British-Indian Delegation

177 The Joint Memorandum observes that since the Governor General in Council exercises superintendence direction and control over the military as well as the civil government in India the reservation of the Department of Defence to the Governor General will have the effect of depriving Ministers of the influence over Army policy which at the present time Indian Members of the Governor General s Council are able to exert It urges therefore (1) that the Governor General s Counsellor in charge of the Department of Defence should always be a non-official Indian and preferably an elected member of the Legislature or a representative of one of the States (2) that the control now exercised by the Finance Member and the Finance Department should be continued and (3) that all questions relating to army policy and the annual army budget should be considered by the entire Ministry including both Ministers and Counsellors though it is admitted that in cases of difference the decision of the Governor General must prevail. As to the first point we do not think that the Governor-General s choice ought to be fettered

in any way, and he must be free to select the man best fitted in his opinion for the post As to the second, we understand that the Military Finance and the Military Accounts Departments are at the present time subordinate to the Finance Department of the Government of India, and not to the Army Department It seems to us a necessary corollary of the reservation of Defence that both of them should be brought under the Department of Defence, since the responsibility for the expenditure which they supervise can only be that of the Governor-General But the transfer would not preclude an arrangement whereby the Federal Department of Finance is kept in close touch with the work of both these branches and we do not doubt that some such arrangement ought to be made As to the third point, we observe a proposal in the White Paper that the Governor-General's Instrument of Instructions should direct him to consult the Federal Ministers before the army budget is laid before the Legislature,[1] and so long as nothing is done to blur the responsibility of the Governor-General it seems to us not only desirable in principle, but inevitable in practice, that the Federal Ministry, and in particular, the Finance Minister, should be brought into consultation before the proposals for Defence expenditure are finally settled

Employment of Indian troops outside India

178 In illustration of the principle that the Governor-General should invite the collaboration of the Federal Ministry to the widest extent compatible with the preservation of his own responsibility, we would refer to the question of lending Indian personnel of the Defence forces for service outside India There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian Defence have not been involved, and we may presume that such occasions will recur There appears to be some misconception in India on this point, which it would be desirable to remove It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive, or conversely, that if it is not excessive troops cannot be spared for service elsewhere These standing forces are in the nature of an insurance against perils which may not always be insistent but which nevertheless must be provided for There is thus no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions If on such occasions the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense, and secondly, whether he can spare the troops having regard to all the circumstances at the time Both these decisions would fall within the exclusive sphere of his responsibility If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow-countrymen were exposed to the risks of operations in

[1] White Paper, Introd, para 23

a cause that was not their own In view however of the complexities that may arise we do not feel able to recommend that the ultimate authority of the Governor-General should be limited in this matter Our proposal is that when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General s decision do not involve the Defence of India in the broadest sense he should not agree to lend such personnel without consultation with the Federal Ministry We have little doubt that in practice he will give the greatest weight to the advice of the Federal Ministry before reaching his final decision The financial aspect has also to be considered Although in the circumstances we are discussing the defence of India would not be involved it might on occasions be in India s general interests to make a contribution towards the cost of external operations A proposal in the White Paper[1] reproduces the provision of s 20 (1) of the Government of India Act that " the revenues of India shall be applied for the purposes of the government of India alone and a contribution in the general interests of India would come within the scope of that provision Under the new Constitution however the recognition of interests of this nature would fall within the province of the Federal Ministry and Legislature since *ex hypothesi* they would not be defence interests If therefore the question should arise of offering a contribution from India s revenues in the circumstances we are discussing (and the interests in question did not fall under the other reserved department of external affairs) we are of opinion that it would need to be ratified by the Federal Legislature

Indianization.

179 We pass to the vexed question of Indianization The Governor General s Instrument of Instructions will we understand formally recognise the fact that the defence of India must to an increasing extent be the concern of the Indian people and not of the United Kingdom alone[2] With this general proposition we are in entire agreement, and we have every sympathy with what the Statutory Commission rightly call the natural and legitimate aspirations of India. But Indianization is a problem which admits of no facile solution and least of all one based upon the automatic application of a time-table and if we should seem to emphasize its difficulties it is because we are anxious that Indian political leaders should be realists in this matter and not because it is either our desire or our intention to derogate from or to evade the pledges which have been given by successive Governments in this country

The practical difficulties

180 It is sometimes said that so long as the officer ranks of the Indian Army are not fully Indianized complete self-government must be indefinitely deferred We do not regard that view as self-evident and indeed the problem of Indianization does not appear to us to be essentially related to the constitutional issues with which we are

[1] White Paper Proposal 150
[2] White Paper Introd para 23

concerned. Since however it has been brought before us, we think it wise to repeat the conclusions of the Statutory Commission that "the issues involved are too vital, and the practical difficulties too great, to justify a precipitate embarkation on a wholesale process of substituting Indian for British personnel in the Indian Army."[1] A further difficulty arises from the difference (in a military sense) between the martial and the other races of India We are well aware that this difference is alleged to have no existence in fact or at least to have been exaggerated for political purposes; but no unprejudiced person can deny that it is there, and that it is beyond the power of Parliament to alter it There are some things which even an Act of Parliament cannot do It is subdued to what it works in, and spiritual values are beyond its scope; and something more than a section in a statute is required to eliminate racial differences or to breathe life into the elements which go to the making of a national army Parliament can provide the conditions in which the creation of a homogeneous Indian nation may become possible; but the act of creation must be the work of Indian hands

Further development of Indianization necessary, but a time-limit impracticable

181 We think it right to mention these things because of the suggestion put forward in the British-India Joint Memorandum that there should be a definite programme of Indianization with reference to a time limit of 20 or 25 years, and that one of the primary duties of an Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization It is in our judgment impossible to include in the Constitution Act or in any other statute a provision for the complete Indianization of the Army within a specified period of time The scheme introduced in 1931 provides for the Indianization of the equivalent of one Cavalry Brigade and one Infantry Division complete with all arms and ancillary services, and we are assured that it has been initiated by the military authorities in India with the fullest sense of their responsibility in the matter and that further developments will depend upon the success of the experiment. If the experiment succeeds, the process will be extended and developed, and Indians can rely on all the sympathy and assistance which we are able to give them for the purpose of creating an army of their own We endorse the measured words of the Statutory Commission "Neither British politician or Indian politician can wisely decide such matters without special knowledge and expert advice We are only concerned here to convey a double warning—a warning on the one hand that Britain cannot indefinitely treat the present military organization of India as sacrosanct and unalterable, but must make an active endeavour to search for such adjustments as might be possible, and a warning on the other hand that Indian statesmen can help to modify the existing arrangement in the direction of self-government only if they too will co-operate by facing the hard

[1] Report, Vol II, para 196

facts and by remembering that those who set them out for further consideration are not gloating over obstacles but are offering the help of friends to Indian aspirations [1]

Rights of defence personnel, etc.

182. It will be more convenient to consider certain questions which have been raised in connection with the rights of defence personnel in that part of our Report[2] in which we deal with the rights of the Services generally The question of the future recruitment for the Indian Medical Service which has an important military bearing is discussed in the same place and it is unnecessary therefore to do more than mention it here

The Commander in Chief.

183 The White Paper proposals have been thought to contemplate the possible abolition of the office of Commander in Chief in India We do not so read them and we are assured that no such intention is in the mind of His Majesty's Government. Although the executive authority of the Federation vested in the Governor General as the King's representative includes the superintendence direction and control of the military government in the sense in which these words are used in section 33 (1) of the Government of India Act the command of the Forces in India will be exercised by a Commander in-Chief to be appointed by His Majesty

External Affairs

External affairs

184 The Department of External Affairs is in our opinion rightly reserved to the Governor General if only because of the intimate connection between foreign policy and defence At the present time the Foreign Department of which the Governor-General himself holds the portfolio is only concerned with the relations between the Government of India on the one hand and foreign countries or the frontier tracts of India on the other and not with the relations between the Government of India and the Dominions and we are informed that the expression external affairs is not intended to include the latter a decision with which we concur It was urged before us that the making of commercial or trade agreements with foreign countries was essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor General. In the United Kingdom however all agreements with foreign countries are made through the Foreign Office. Any other arrangement would lead to grave inconvenience but when a trade or commercial agreement is negotiated the Foreign Office consult and co-operate with the Board of Trade whose officials necessarily take part in any discussions which precede the agreement We assume that similar arrangements will be adopted in India and that the Department of External Affairs will maintain a close contact with the Department of Trade or Commerce but we are clear that agreements of any kind with a foreign country must be made by the Governor General even if on the merits of a trade or commercial issue he is guided by the advice of the appropriate Minister

[1] Report Vol. I para 126
[2] *Infra* para 293

Ecclesiastical Affairs

185 The origin of the Ecclesiastical Department is to be found in the obligation imposed by the Charters of the East India Company to provide chaplains on their ships and at their stations; and since 1858, when the rights and obligations of the East India Company finally passed to the Crown, the Government of India have rightly regarded it as their duty to provide for the spiritual needs of British troops stationed in India and, so far as circumstances admit, of the European members of the Civil Services The Secretary of State in Council has, under his general powers, established and maintained for this purpose a cadre of official chaplains appointed by himself, and has authorised grants-in-aid out of Indian revenues for the maintenance of churches and of a certain number of non-official chaplains, the present annual expenditure of the Department being approximately 40 lakhs. Since the Indian Church Act, 1927, and the Indian Church Measure of the same year, by virtue of which the Church in India became an autonomous body, Indian Bishops are no longer appointed by the Crown. Ecclesiastical affairs.

186 Under the proposals in the White Paper the powers of the Secretary of State will pass to the Federal Government, but will be exercised under the personal direction of the Governor-General, subject (as in the case of the other Reserved Departments) to the general control of the Secretary of State It is clear that any sudden or unreasonable curtailment of Government assistance might gravely embarrass the new autonomous Indian Church, but obviously the latter must in course of time come to depend less and less upon Government assistance, whether in the form of the provision of official chaplains or of grants in aid for the maintenance of non-official chaplains or churches, and we understand that the policy of the Government of India has for some time been gradually to reduce ecclesiastical expenditure with the ultimate intention of restricting it to provision for the spiritual needs of British troops and, within reasonable limits, of the civil official population The expenditure of the Department will not therefore rise above the present figure and may fall below it as time goes on We approve the arrangement proposed, but we think that in the circumstances the Constitution Act should specify a maximum figure above which the annual appropriation for ecclesiastical expenditure cannot go It appears that the whole of the expenditure in respect of official chaplains is now classified as civil expenditure, although a large proportion of the maintained churches and the services of over 90 per cent of the official chaplains at present employed minister primarily to the spiritual needs of the Army, and it is a matter for consideration whether ecclesiastical expenditure for Army purposes should not be under the control of the Department of Defence We understand that this question is now under examination by the Government of India. Limit for future ecclesiastical expenditure suggested.

(iii) *The Governor-General and the Federal Administration*

Ministers and Counsellors.

187 We do not think it necessary to repeat the observations which we have already made on this subject in connection with the Provinces for they are equally applicable to the relations between the Governor General and the Federal Administration. But the existence of the Reserved Departments and the Governor-General s Counsellors introduces an additional factor The Federal Government will be a dyarchical and not a unitary government the Governor General s Ministers having the constitutional right to tender advice to him on the administration of a part only of the affairs of the Federation while the administration of the other part remains the exclusive responsibility of the Governor-General himself In these circumstances it is clear that the Governor-General s Counsellors who will be responsible to the Governor General alone and will share none of the responsibility of the Federal Ministers to the Federal Legislature cannot be members of the Council of Ministers It has indeed been suggested that, for the purpose of securing a greater unity in the Government the Counsellors ought to form part of the Ministry entering and leaving office with them whatever the political complexion of the Ministry may be An artificial arrangement of this kind completely divorced from the realities of the situation, is in our opinion quite inadmissible The Counsellors could not by a simulated resignation diminish their responsibility to the Governor General nor would the Government become any more unitary than it was before It is no doubt true that legal fictions which mask a change of substance by preserving the outward form have often proved a valuable aid to constitutional development but a fiction whereby the form but not the substance is altered can serve no useful purpose We hope nevertheless that the Counsellors even if they cannot share the responsibility of Ministers will be freely admitted to their deliberations—and indeed that there will be free resort by both parties to mutual consultation It would indeed be difficult if not impossible to conduct the administration of the Department of Defence in complete aloofness from other Departments of government and the maintenance of close and friendly relations with Departments under the control of Ministers can only increase its efficiency We understand the intention of His Majesty s Government to be that the principle of joint deliberation shall be recognised and encouraged by the Governor-General s Instrument of Instructions We warmly approve the principle and we think that it will prove a valuable addition to the machinery of government without derogating in any way from the personal responsibility of the Governor-General for the administration of the Reserved Departments

Misapprehensions as to position and functions of Counsellors

188 We recognise the difficulty which necessarily attaches to a dyarchical system, and that, for its successful working, tact and sympathy of no common order will be required on both sides The White Paper states that the proposals which it contains "proceed on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise "[1] If this assumption proves, as we hope, to be well-founded, many difficulties will disappear. Some at least of them appear to arise from a misunderstanding of the White Paper Thus we were informed that, though the normal number of the Governor-General's Counsellors would probably be two, it was thought advisable to take power to appoint a third in case of need , but, according to the Joint Memorandum of the British-India Delegation, fears have been expressed in India that, if a third Counsellor is appointed and " is placed in charge of the special responsibilities of the Governor-General," he may develop into what is described as "a super-Minister, whose activities must necessarily take the form of interference with the work of the responsible Ministers " It is impossible to forecast with any accuracy the volume of work involved in the Governor-General's administrative responsibilities, and it may well be that the appointment of a third Counsellor will be found necessary; but, if we may respectfully say so, the notion that there is a danger of his becoming a " super-Minister " seems to us altogether fantastic. To speak of a Counsellor being " placed in charge of the special responsibilities of the Governor-General " is wholly to misapprehend the conception of the special responsibilities embodied in the White Paper, which do not set apart a governmental or departmental sphere of action from which Ministers are excluded, or even one in which the Governor-General has concurrent powers with his Ministers We do not, as we have said elsewhere, anticipate that the occasions on which the Governor-General or a Governor will find himself compelled, in the discharge of his special responsibilities, to dissent from ministerial advice tendered to him are likely to be numerous , and the Governor-General and his Counsellors, even if the latter had the power, will not have such ample leisure at their disposal as to be tempted to utilise it for the purpose of interfering with the day-to-day administrative business of Ministers

The Governor-General's staff

189 The Governor-General will require an adequate staff with an officer of high standing at its head Whether one of the Counsellors will fill this position it is unnecessary for us to consider, for the question is administrative rather than constitutional , but it is of exceptional importance that the Governor-General should be well served and we do not doubt that this matter has engaged, and will continue to engage, the earnest attention of His Majesty's Government

[1] White Paper, Introd , para 26

(iv) *The Governor-General's Special Powers*

Special powers.

190 The special powers legislative and financial of the Governor General as described in the White Paper do not differ *mutatis mutandis* from those which it is proposed to give to the Governor of a Province It is therefore sufficient to refer to what we have already said upon the subject in an earlier part of this Report and we have nothing to add to it here

(2) Relations between the Federal Executive and Legislature

The difficulties of Dyarchy at the Centre

191 We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province and those remarks apply *mutatis mutandis* to the relations between the Federal Executive and Legislature. It is only necessary here to refer briefly to two special complications which are introduced into the federal problem the existence of the Governor-General s Reserved Departments and the question of the representation of the States in the Ministry On the first point we have already spoken frankly of the difficulties presented by a system of dyarchy We can only repeat that faced by a choice in which every conceivable alternative involves some division of responsibility and some danger of friction we recommend the alternative which draws the line of division at defence and external affairs as corresponding most nearly with the realities of the situation. that of these the crucial question so far as the Legislature is concerned is defence and that on this question we regard an All-India Federation as the best means of ensuring that the Central Legislature while discharging its legitimate function of discussion and criticism will not (in the phrase of the Statutory Commission) seek to magnify its functions in the reserved field

and of composite nature of Executive.

192. On the second point it will be observed that under the White Paper proposals the Governor-General is to be directed by his *Instrument of Instructions to include so far as possible* in his Ministry not only members of important minority communities but also representatives of the States which accede to the Federation. It may be thought that this proposal runs the risk of adding to the possible dangers of communal representation in the Ministry to which we have referred in speaking of the Provinces the further dangers of territorial representation. We can scarcely doubt that State representation will always be regarded by the States them selves as an essential element in every Administration and this fact may be thought likely to retard the growth of political parties, in the true sense even more at the Centre than in the Provinces for the Federal Legislature though intended to be representative of India as a whole will itself be largely based in any case on communal representation. In these circumstances we do not overlook the possibility that in place of an Executive which propounds and

a Legislature which deliberates upon, a national policy, there may be found two bodies each tending to become, in a classic phrase, "a congress of ambassadors from different and hostile interests, which interests each must maintain as an advocate and agent against other agents and advocates" This, however, is a common feature of all Federations Few, if any, have in practice found it possible to constitute an Executive into which an element of territorial representation does not in some sense enter, and in the Swiss Constitution the principle of such representation is explicitly laid down, so that to advance this as an argument against the White Paper proposals would be, in effect, to reject an All-India Federation even as an ultimate ideal. Moreover, the limitation of the functions of the Federal Executive to matters of essentially All-India interest is calculated to minimise the dangers of both communal and territorial representation. Tariffs and excise duties, currency and transport, are national, not communal questions; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces; and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we have described may even come to function, as we believe that the Executive of the Swiss Confederation functions, as a kind of business committee of the Legislature

(3) The Federal Legislature

Composition of, and election to, the Legislature

Difficulty of the subject.

193 There is no part of the subject of our enquiry which has seemed to us to present greater difficulties than the question of the method of election to a Central Legislature for India It is one on which there has always been a marked difference of opinion, and we recall that the Joint Select Committee which considered the Government of India Bill in 1919 did not accept the recommendations of the Southborough Committee which had been embodied in the Bill, and that there is a similar divergence between the recommendations of the Statutory Commission and the proposals in the White Paper It should be recognized that to attempt to provide a legislative body which shall be representative of a population of nearly 350 millions is without precedent We are met at the outset by the difficulty of applying the representative system on a basis of direct representation to a unit of such magnitude On the one hand, if the constituencies were of a reasonable size the resultant Chamber would be unmanageably large, if, on the other hand, the Chamber were of a reasonable size the constituencies on which it was based would necessarily be enormous In these circumstances our task has been an anxious one, and we have only arrived at our conclusions after a careful and prolonged examination of the matter in all its aspects

Composition of Council of State and Federal House of Assembly proposed in White Paper

194 The White Paper proposes that the Federal Legislature shall consist of the King represented by the Governor-General and two Chambers to be styled the Council of State and the House of Assembly The Council of State would consist of not more than 260 members of whom 150 would be representatives of British India not more than 100 would be appointed by the Rulers of States who accede to the Federation and not more than 10 would be nominated by the Governor-General in his discretion. The Governor-General s Counsellors who would be *ex-officio* members of both Chambers for all purposes except the right of voting are not included in the above figures and it is proposed that the members to be nominated by the Governor General should not be officials The House of Assembly would consist of not more than 375 members of whom 250 would be representatives of British India and not more than 125 would be appointed by the Rulers of States who have acceded to the Federation.[1]

Method of election to Council of State proposed in the White Paper

195 The representatives of British India in the Council of State would to the number of 136 be elected by the members of the Provincial Legislatures by the method of the single transferable vote Indian Christian Anglo-Indian and European members of the Provincial Legislatures would not be entitled to vote for these representatives but 10 non provincial communal seats would be reserved for them (7 for Europeans 2 for Indian Christians and one for Anglo-Indians) these seats being filled by three electoral colleges consisting respectively of the European Indian Christian and Anglo-Indian members of the Provincial Legislatures and voting for the European and Indian Christian seats being by the method of the single transferable vote Coorg Ajmer Delhi and Baluchistan would each have *one representative Members of the Coorg Legislature would elect* to the Coorg seat but special provision is to be made in the case of the other three [2]

Method of election to the House of Assembly proposed in the White Paper

196 The representatives of British India in the House of Assembly would be elected by direct election in provincial constituencies except in the case of three of the seats reserved for Commerce and Industry and one of the Labour seats where the constituencies will be non provincial. Election to the seats allotted to the Muhammadan Sikh Indian Christian, Anglo-Indian and European constituencies would be by voters voting in separate communcal electorates and all *qualified voters who are not voters in one of these constituencies* would be entitled to vote in a general constituency Election to the seats reserved for the Depressed Classes out of the general seats would be in accordance with the arrangements embodied in the Poona Pact, which we have described elsewhere Election to the woman s seat in each of the Provinces to which such a seat is allocated would be by members of the Provincial Legislature voting by the method

[1] White Paper Proposals 22–37
[2] White Paper Appendix I

of single transferable vote, the special seats assigned to Commerce and Industry would be filled by election by Chambers of Commerce and other similar associations, and the special seats assigned to Landowners would be filled by election in special landholders' constituencies [1]

The precedent of other Federations.

197 The proposals in the White Paper thus follow other Federal Constitutions in adopting direct election for the Lower House We are then confronted with the question whether, in spite of precedents, such a system is appropriate in the case of so vast a country as India, and whether circumstances do not require the substitution of some method of indirect election, and, if so, what that method ought to be.

Direct or indirect election

198 Direct election has the support of Indian opinion and is strongly advocated by the British-India Delegation in their Joint Memorandum It has been the system in India for the last twelve years, and has worked on the whole reasonably well, though, it should be remembered, with a much more limited franchise than that now proposed The Southborough Committee which visited India in 1919 for the purpose of settling the composition of, and the method of election to, the Legislatures set up by the Government of India Bill of that year, did, it is true, recommend the indirect system, but the Joint Select Committee which examined the Bill were of a contrary view, and Parliament accepted the opinion of the Committee It may also be argued that, with the increase in the size of the Legislatures now proposed, it will be possible to effect so appreciable a reduction in the size of the existing constituencies as to diminish the objections based on that feature of the present system But even the reduction in the size of constituencies which would follow from the White Paper proposals will still leave them unwieldy and unmanageable, unless the number of seats is increased beyond all reasonable limits Where a single constituency may be more than twice as large in area as the whole of Wales, a candidate for election could not in any event commend or even present his views to the whole body of electors, even if the means of communication were not, as in India, difficult and often non-existent, and quite apart from obstacles presented by differences in language and a widespread illiteracy, nor could a member after election hope to guide or inform opinion in his constituency These difficulties would be serious enough with the comparatively limited franchise proposed in the White Paper, but future extensions of that franchise would be inevitable, and it is obvious that with every increase in the electorate these difficulties are enhanced Indeed, any considerable extension of the franchise under a system of direct election would cause an inevitable breakdown We do not believe that constituencies both of large size and containing an electorate of between 200,000 and 300,000 people can be made the basis of a healthy parliamentary system. We think that Parliament and Indian opinion should face

[1] White Paper, Appendix II

[illegible] that direct election, apart from [illegible] at the present time, cannot provide [illegible] al development in the future. [illegible] to cement India at the outset [illegible] which must prove to be

Composition of Council.

194 The Whi[illegible] consist of the Ki[illegible] Chambers to be sty[illegible] of [illegible]bly The Council o[illegible] a blin[illegible]ers of whom 150 wo[illegible] [illegible]100 would be ap[illegible]

Essentials of representative government.

199 A [illegible] constituency is [illegible]ation and not [illegible] a representative and his the former may [illegible]eral in his discre[illegible] representative government, so that whom he represents [illegible] be *ex-officio* me[illegible] a genuine responsibility to those his actions and in case of need [illegible] him to [illegible] that they are able to influence [illegible] to be [illegible]. The relationship has been described in a passage familiar to all [illegible] The Ho[illegible] It ought to be the happiness and glory of a representative to live in the st[illegible] the closest correspondence and the most unreserved communication with his constituents their wishes ought to have great weight with him their opinion high respect and their business his unremitted attention but we confess that we can recognize no likeness to this description in any relations which could exist between a member of the Central Legislature in India and the vast constituencies which he would represent under a system of direct election.

Indirect election recommended.

200 We realise the strength of Indian opinion in this matter and we are far from denying that the present system has produced legislators of high quality but we are now recommending to Parliament the establishment of self government in India and we regard it as fundamental that the system of election to the Central Legislature should be such as to make the responsibility of a member to those who elect him a real and effective responsibility We do not think that this can be secured under a system of direct election proposed in the White Paper and though we are conscious that we are reversing the decision made by Parliament in 1919 we have come to the conclusion notwithstanding the theoretical objections which can be urged against it that there is no alternative to the adoption of some form of indirect election.

Election to Federal House of Assembly by Provincial Assemblies.

201 We have examined many systems of indirect election. Systems based upon electoral groups at first sight have many attractions but we have felt bound to reject them as being impracticable at the present time for reasons similar to those which we have already given in that part of our Report which deals with the Provincial franchise.[1] We have also considered election by municipal and other local bodies but the general tenor of the evidence before us indicates that Indian opinion is strongly opposed to this system largely owing to its association with the procedure under the Morley Minto Constitution which does not seem to have worked well and we cannot recommend it in present circumstances We have come to the conclusion that the Provincial Assemblies form the only possible electoral colleges and we recommend accordingly that the Federal House of Assembly should be in the main elected by members of

[1] *Supra* para. 129

those bodies. We should have been glad if it had been possible to provide for election by the method of single transferable vote, since this would have avoided the necessity of reproducing at the Centre the system of a communal distribution of seats. We however found ourselves unable to recommend this; firstly, because the special interests such as commerce, industry, landlords and labour, would not obtain adequate representation; and secondly, because, though the single transferable vote would in all probability make it possible for the communities to obtain substantially the same representation as under the White Paper proposal, the minority communities would regard it with suspicion, and we think it essential that nothing should be done which would afford opportunities for re-opening the communal question. We accordingly recommend that the Hindu, Muhammadan, and Sikh seats should be filled by the representatives of those communities in the Provincial Assemblies voting separately for a prescribed number of communal seats; and that within the Hindu group special arrangements should be made for the Depressed Classes With regard to the Indian Christians, Europeans and Anglo-Indians their representation in the Provincial Assemblies is so small that this plan would not be suitable, and we think, therefore, that it will be necessary that they should vote in an electoral college formed by their representatives in all the Provincial Assemblies

Indirect election to be regarded as being open to future review

202. We feel strongly, however, that it is not possible for Parliament to lay down to-day the exact method of constituting the Central Legislature for any long period of time. The question has been repeatedly examined, both before the passage of the present Government of India Act, and subsequently by the Statutory Commission, and the Round Table Conferences and the Indian Franchise Committee in connection with the present proposals for reform Throughout this whole period opinions have been deeply divided and no clear-cut solution has emerged, as indeed was to be expected when an attempt is being made to create a Federation on a scale and of a character hitherto without precedent We have chosen the system of indirect election by the Provincial Legislatures, not because we do not feel the force of the arguments which can be brought against it, but because we think that it is the arrangement which will give the most practical system at the outset of the Federation Moreover, while it will be possible in future to pass from the indirect to the direct system of election should experience show that step to be advisable, the maintenance, and still more the extension, of the system of direct election to-day would be to commit India to a system which logically leads to adult suffrage, before any way has been discovered of overcoming the insuperable objections to the gigantic constituencies, containing hundreds of thousands of voters, which are inevitable with adult franchise in India under the ordinary system of direct election We feel that the ultimate solution may well be found in some

variant either of the system whereby groups of primary voters elect secondary electors who vote directly for members of the federal assembly or of the system whereby those already elected to local bodies such as village panchayats are the voters who vote directly for members of that assembly Systems of this kind apparently work with considerable success in many countries where conditions are not dissimilar to those in India But the discovery of the best method of adapting those ideas to India s needs and of removing the obstacles which now stand in the way of their adoption is clearly one which should be made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider therefore, that our proposals should be regarded as being open to future review and that further consideration should be given to the question of the method of composing the Central Legislature in the light of practical working of the Constitution We do not propose that there should be any formal examination of the problem by a Statutory Commission after any specific date for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that Parliament should recognise that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the Constitution works and of the new political forces it has brought into being it may be necessary to make amendments in the method of composing the Central Legislature and we hope that if Indian opinion thinks modification is required the Federal Legislature will lay its own proposals before Parliament in the form recommended elsewhere[1] in this Report

The Council of State.

203 The White Paper proposes that the members of the Council of State should be elected by the members of the Provincial Legislatures including members of the Provincial Upper Chambers where the Legislature is bicameral. The method of election proposed is that of the single transferable vote a communal distribution of seats being thereby avoided but special arrangements are contemplated for Europeans Anglo-Indians and Indian Christians which would not otherwise be in a position to secure adequate representation No provision is made for representation in the Council of State of special interests. We accept these proposals in principle but if as we recommend the Provincial Assemblies are to elect to the Federal House of Assembly it will clearly be necessary to find different electoral colleges for the Council of State It seems to us that the only alternative electoral college is the Provincial Legislative Council in those Provinces where a Legislative Council exists and in the unicameral Provinces we recommend that an *ad hoc* electoral college should be constituted of persons elected by an electorate broadly corresponding to the electorate for the Legislative Councils in bicameral Provinces the communal distribution of seats in this electoral college corresponding to that in the Provincial Assemblies

[1] *Infra* paras. 380 and 381

Council of State should be constituted on more permanent basis

204. The White Paper proposes that each Council of State shall continue for seven years and each Federal House of Assembly for five years, power being reserved to the Governor-General in his discretion to dissolve both Houses, either separately or simultaneously. We prefer a Council of State constituted on a more permanent basis, and accordingly recommend that it should not be subject to dissolution, that its members should be elected for a period of nine years, and that one-third should retire and be replaced at the end of every third year. Special arrangements would in that event be required for the first nine-year period following on its first constitution.

Size of the two Federal Houses

205. The numbers proposed in the White Paper for the two Federal Houses have been the subject of criticism, and we see many advantages in Houses of a smaller size, especially in view of the proposals to which we refer hereafter for Joint Sessions of both Houses. We are however convinced, after a careful examination of the whole question, that the balance of convenience is against any reduction of the numbers proposed in the White Paper. If the size of the Council of State were materially reduced and if, as we have recommended, one-third of its membership is replaced every three years, the number of members whom Provincial electoral colleges would be called upon to choose at any given election would be too small for the method of the single transferable vote to produce an equitable result from the point of view of minorities; and we should greatly regret the introduction of a communal basis for the Federal Upper House. There is another consideration affecting the Federal House of Assembly. It would be difficult, if the size of this House were reduced, to make any proportionate reduction in the number of seats assigned to special interests, since this would in several instances deprive them of seats which they have in the existing Legislative Assembly. These special interest seats, apart from those assigned to European commerce and industry, would in practice be almost entirely occupied by members of the Hindu community. We think it important that the Muhammadan community should have secured to it, as the White Paper proposes, one-third of all the British-India seats; but if the number of the special interest seats is to remain undisturbed, the application to a substantially smaller House of the undertaking given to the Muhammadans would result in a disproportionate number of the ordinary (non-special) seats being allocated to the Muhammadans. In addition to these considerations in regard to British-India representation, it must also be borne in mind that the size of the Houses will regulate the number of seats available for the representation of the Princes, and, unless this representation is generally acceptable to the Princes as a whole, they may be unwilling to federate and the first condition precedent to the establishment of the Federation would not be fulfilled. Certain of the larger States have, it is true, expressed a preference for substantially smaller Houses, but we are satisfied that the general body of States would be unwilling to accept any arrangement which assigned to the States less than 100 seats in the Federal

Upper House There is general agreement that the States should have a 40 per cent. representation in this House which implies a House of about 250 members as the White Paper proposes. For reasons which we discuss in connection with the relative powers of the two Houses we think it important also that their proportionate strength should be as in the White Paper It follows therefore that since the Upper House is to have a strength of about 250 the Lower House cannot be reduced below the White Paper figure. The combined effect of the considerations mentioned in this and the preceding paragraph has led us to the conclusion notwithstanding all the arguments which can be urged on the other side that the size of the two Houses should stand as in the White Paper

Proposal for unicameral Legislature rejected

206 We have carefully considered a suggestion that the Federal Legislature should consist of one Chamber only We recognise that there is much to be said for this proposal also but on the whole we do not feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by we think the great bulk of both British and Indian opinion during the whole course of the Round Table Conferences that the Federal Legislature should be bi-cameral. Certainly a reversal of this view would be distasteful to nearly all if not to all the Indian States

Details of scheme set out in Appendix.

207 We have set out in the Appendix (II) to this Section of our Report[1] a description of the scheme of indirect election which we recommend for the Council of State and for the Federal House of Assembly so far as the British India representatives are concerned. The details of the scheme are necessarily complex and we think that they can be better appreciated if dealt with in this manner It may well be that on further examination parts of the scheme will be found to require readjustment or revision in matters of detail and we do not desire that our recommendations should be taken as precluding a further expert examination of it.

Representation of the States.

208 The representatives of the States will be appointed by the Rulers of the States concerned. A difficult question arises however with regard to the allocation among over 600 States Estates and Jagirs which constitute the non British portion of India of the 100 and 125 seats available for the States as a whole in the Council of State and Federal House of Assembly respectively The White Paper does not deal with this matter which we are informed has been under discussion between the Governor-General and the Princes for some time past and we have been furnished with details of a scheme which the Governor-General has propounded as a basis for discussion This scheme is set out in the Appendix (III) to this Section of our Report [2] It proceeds on the principle that the allocation of seats among the States should in the case of the Council of State take account of the relative rank and importance of the State as indicated by the dynastic salute and other factors and in the case

[1] *Infra* p. 127
[2] *Infra* p. 131

of the House of Assembly, should be based in the main on population. We have been given to understand that, while susceptible of minor adjustment in a few particulars, the scheme has met with a large measure of support among the States So far as we are able to judge, a scheme on these lines would be a reasonable one, and would be appropriate to the new constitutional arrangements which we contemplate We observe that it makes provision for the pooling within groups of States of the representation allotted to them individually, with the object of securing a form of representation more suited to their common interests, and for giving legal effect to any arrangements so made We see many advantages in a plan of this kind, if it should prove practicable It would also, we suggest, contribute to the selection of better qualified States' representatives in the Federal Legislature if adjacent States, at any rate those not entitled under the scheme proposed to continuous individual representation, were grouped together regionally for the selection of joint representatives in the Federal Legislature who would retain their seats throughout its full term

Temporary weightage in compensation for non-acceding States

209 The scheme makes provision for the representation of the whole of the States of India It may well be, however, that not all the States will accede, at any rate in the early years of the Federation , nor could States under a minority administration in any event accede until the Ruler had taken over the government of the State The White Paper proposes that any vacancies arising from non-accession should for the time being remain unfilled The States have urged that this arrangement would operate to the prejudice of those States which have in fact acceded in relation to the British-India portion of the Legislature, and we are of opinion that there is substance in the objection We do not think that it would be reasonable to allocate to the States which accede the whole representation of those who are holding back , but we recommend that the representatives of the States which have acceded should be empowered to elect additional representatives in both Houses up to half the number of States' seats (including those States whose Rulers are minors) which remain unfilled We think, however, that this arrangement should cease to operate when, as a result of accessions, 90 per cent of the seats allocated to the States are filled, and in any event at the expiration of 20 years from the establishment of the Federation

Tenure of States' representatives

210 A suggestion was brought to our notice that provision should be made in the Constitution Act for the vacation of his seat by a member of the Legislature appointed by the Ruler of a State if called upon to do so by notice in writing from the Ruler We could not accept this suggestion We conceive that a State representative, although he is nominated and not elected, holds his seat on precisely the same tenure as an elected representative from British India, and no distinction should be made between the two

Powers of the Federal Legislature

Powers of Federal Legislature.

211 The observations which we have made in connection with the powers of the Provincial Legislatures apply generally *mutatis mutandis* to the Federal Legislature and we are of opinion that the same general restrictions on the legislative power should apply in both cases We note that in addition to the legislative proposals which in a Province require the Governor s previous sanction and will in the Federal Legislature require the sanction of the Governor General legislative proposals affecting any Reserved Department the coinage and currency of the Federation or the powers and duties of the Reserve Bank in relation to the management of currency and exchange will also require the Governor-General s previous sanction [1] We have no comment to make on the first of these which is a necessary corollary on the reservation to the Governor-General of the control over certain Departments and we deal with the second and third elsewhere in connection with the Reserve Bank

The Governor General s assent etc to Bills

212 It is proposed (and we concur) that the Governor General s powers with regard to assent to reservation of or withholding assent from any Bills presented to him should be the same as in the case of the Governor of a Province except that the Governor-General reserves a Bill for the signification of His Majesty s pleasure whereas a Governor reserves it for the consideration of the Governor-General [2]

British Baluchistan

213 It is proposed that the powers of the Federal Legislature shall not extend to the Chief Commissioner's Province of British Baluchistan The legislation required is to be obtained either by Regulations made by the Governor-General at his discretion or by *the application by him to the Province with or without modification* of any enactment of the Federal Legislature an arrangement which we are satisfied is the most appropriate which could be devised for an area of this character [3]

Procedure in the Federal Legislature

Procedure in the Federal Legislature.

214 On this subject also it is unnecessary to repeat what we have already said in connection with the Provincial Legislatures We draw attention however to three heads of expenditure which it is proposed should not be submitted to the vote of the Legislature and which necessarily have no counterpart in the Provinces [4] These are (1) expenditure for a Reserved Department (2) expenditure for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States and (3) expenditure for the discharge of the duties imposed by the Constitution Act

[1] White Paper Proposal 119
[2] White Paper Proposal 39
[3] White Paper Proposal 58.
[4] White Paper Proposal 49

on the Secretary of State. The inclusion of the first necessarily follows from the reservation of administration and control to the Governor-General. The second would include the expenses of the Political Department and other matters connected with the rights and obligations of Paramount Power. We understand the third to refer to such matters as expenditure in connection with the Secretary of State's establishment in London, liabilities incurred by him on contracts or engagements to which he is or will become a party under the provisions of the Constitution Act, and payments of compensation to members of the Public Services under his powers in that behalf We have no comments to make on any of these proposals

Relations between the two Houses.

215 We have pointed out that the Provincial Upper Houses are not intended to be bodies having equal powers with the Legislative Assemblies In the case of the Federal Legislature, the proposals in the White Paper contemplate two Houses with nearly co-equal powers The principal difference is in the sphere of finance It is proposed that Money Bills should only be introduced in the Lower House, the Upper House having power to amend or reject them; and that in relation to Demands for Grants the power of the Upper House should be limited to requiring, but only at the instance of the Government, that any Demand which has been reduced or rejected by the Lower House should be brought before a Joint Session[1] We entirely endorse the principle that, so far as possible, the two Houses should have equal powers, but we are not satisfied that the proposals to which we have just referred sufficiently secure this We think that the Upper House should have wider powers in relation to finance, and that it should be able, not only to secure that a rejected grant is reconsidered at a Joint Session of the two Houses, but also to refuse its assent to any Bill, clause or grant which has been accepted by the Lower House. We think, therefore, that all Demands should be considered first by the Lower House and subsequently by the Upper, and that the powers of each House in relation to any Demand should be identical, any difference of opinion being resolved at a Joint Session to be held forthwith

Joint Sessions

216 We approve the plan of resolving the differences between the Houses by the decision of a majority of the two Houses sitting and voting together But the principle of equality of powers requires that an effective voice in the final decision should be secured to the Upper House, and it is for that reason that we have accepted the numerical proportion between the two Houses proposed in the White Paper, that is to say, a proportion of approximately 2 3 The principle also makes appropriate a departure from the scheme of Joint Sessions which we have recommended in the case of the Provinces There is no necessity for so long a period to elapse before the Joint Session is held as in the Provinces, where the functions of

[1] White Paper Proposals 38, 41, and 48

the Upper House are only those of revision and delay We do not think that the White Paper proposals are in all respects satisfactory In particular we think that there would be an advantage in extending the period after which a Joint Session may be held from three months to six and in providing that it should not be held during the session of the Legislature in the course of which the difference of opinion arose between the Houses It should be for the Federal Government to decide whether a Bill is to lapse or be referred to a Joint Session and in the former case the Government should inform the Legislature of their decision before the end of the current session. The above should be the ordinary procedure but in the case of Bills affecting the Reserved Departments or Bills which in the opinion of the Governor General involve his special responsibilities or would affect the financing of the Federal Government s requirements the Governor General must have power in his discretion to summon a Joint Session and obtain a decision forthwith. Amendments to any Bill which is brought before a Joint Session should be subject to the rules which we have recommended in the case of the Provinces

States representatives and British-India legislation.

217 The question was much discussed before us whether any special provision ought to be included in the Constitution Act prohibiting States representatives from voting on matters of exclusively British India concern The British India Delegation in their Joint Memorandum urge that this should be done and their suggestions are briefly as follows —(1) that in a division on a matter concerning solely a British India subject the States representatives should not be entitled to vote (2) that the question whether a matter relates solely to a British India subject or not should be left to the decision of the Speaker of the House which should be final but (3) that if a substantive vote of no confidence is proposed on a matter relating solely to a British India subject the States representatives should be entitled to vote since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibility (4) that if the Ministry is defeated on a subject of exclusively British India interest it should not necessarily resign We do not think that these suggestions would in any way meet the case. Circumstances may make any vote of a Legislature even on a matter intrinsically unimportant an unmistakable vote of no confidence the distinction between formal votes of no confidence and other votes is an artificial and conventional one and it would be impossible to base any statutory enactment upon it On the other hand the States have made it clear that they have no desire to interfere in matters of exclusively British India concern nor could we suppose that it would be in their interests to do so but they are anxious for reasons which we appreciate that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment from supporting a Ministry with whose general policy they are fully in agreement or from withholding their support from a Ministry whose policy they disapprove In

these circumstances we think that the true solution is that there should be no statutory prohibition, but that the matter should be regulated by the common sense of both sides and by the growth of constitutional practice and usage We have, however, one suggestion to make which we think may be worth consideration Under the Standing Orders of the House of Commons all Bills which relate exclusively to Scotland and have been committed to a Standing Committee are referred to a Committee consisting of all the members representing the Scottish constituencies, together with not less than ten nor more than fifteen other members. We think that a provision on these lines might very possibly be found useful, and that the Constitution Act might require that any Bill on a subject included in List III should, if extending only to British India, be referred to a Committee consisting either of all the British India representatives or a specified number of them, to whom two or three States' representatives could, if it should be thought desirable, be added

(4) The Relations between the Federation and the Federal Units

Administrative nexus between the Federation and its constituent units.

218 The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments The Provincial Governments are at the present time subordinate to the Central Government and under a statutory obligation to obey its orders and directions, though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the Provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred Provincial sphere But now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and its constituent units We are impressed by the possible dangers of a too strict interpretation of the principle of Provincial Autonomy The Statutory Commission in their recommendations for Provincial Autonomy were, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend responsibility at the Centre The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre We have discussed elsewhere in our Report both the legislative and the financial nexus which the White Paper proposes to create; and we confine our observations here to the administrative relations between the Federal Government, as such, on the one hand and the Provincial Governments and the Rulers or Governments of the Indian States on the other

Duty of Provincial Government to give effect to Federal laws.

219 The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and subject to such reservations as may be contained in the Ruler s Instrument of Accession in every Indian State which is a member of the Federation The administration and execution of these laws may be vested in the Federation itself and in Federal officers subject in the case of the States to the terms of the Ruler s Instrument of Accession or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the law on behalf of the Federal Government. The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province [1] This as we read it is a statement of the constitutional duty of every Province in relation to Federal laws which has no sanction behind it other than the moral obligation which must always rest upon the constituent units of a Federation to give effect to the laws of the political organism of which they form a part But in addition to this general statement of a moral obligation the White Paper proposes to empower the Federal Government to give directions to a Provincial Government for the purpose of securing that due effect is given in the Province to any such law and that the manner in which the Provincial Government s executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government In the case of the States it is proposed that the Ruler should accept the same general moral obligation, which, as we have said will rest upon the Provincial Governments to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the Federal obligations of the State are duly fulfilled shall come directly from the Governor General himself

Distinction between legislation in the exclusive and concurrent fields.

220 We are of opinion that the proposals in the White Paper on this subject require modification in two directions In the first place the White Paper draws no distinction between the execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List I) and the execution of Federal Acts in the concurrent field (List III) It is evident that in its exclusive field the Federal Government ought to have power to give directions—detailed and specific if need be—to a Provincial Government as proposed in the White Paper The same principle should apply to matters in which action or inaction by a Provincial Government within its own exclusive sphere affects the administration of an exclusively Federal subject—that is to say it should

[1] White Paper Proposal 125

be open to the Federal Government to give directions to a Provincial Government which is so carrying on the administration of a Provincial Subject as to affect prejudicially the efficiency of a Federal Subject But it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of Provincial concern, and the agency by which such legislation will be administered will be almost exclusively a Provincial agency The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience and, if this procedure were to carry with it automatically an extension of the scope of Federal administration, the Provinces might feel that they were exposed to dangerous encroachment On the other hand, the considerations of practical convenience which would prompt the use of the Federal Legislature in this field will often be the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts or of the Provincial authorities responsible for public prosecutions There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the Provinces In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control The other class of concurrent subjects consists mainly of the regulation of mines, factories, employers' liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of Provincial opinion will sanction any unreasonable encroachment upon the Provincial field of action, but, as a further safeguard against such encroachment, we think that any clause in a statute conferring such powers should require the previous sanction of the Governor-General

Enforcement of Federal Government's directions

221 In the second place it is necessary to provide for a situation, though we may be permitted to hope that it will never in practice arise, in which a Provincial Government has declined to carry out the directions which it has received from the Federal Government. Under the White Paper proposals these directions would be issued

in the name of the Governor-General as the executive head of the Federation in whose name all executive acts will run but where (as will commonly be the case) the directions relate to matters within the Ministerial sphere the Governor General will be acting upon the advice of his Ministers Among the special responsibilities of the Governor of a Province is one for securing the execution of orders lawfully issued by the Governor-General and since the directions of which we have spoken would be lawful orders of the Governor-General it would become the duty of the Governor to secure their execution in opposition to the policy and (it must necessarily follow) to the advice of his Ministers. We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of Federal Ministers and where a conflict of this kind arises between the Federal Government and the Government of a Province any directions by the Governor-General which require the Governor to dissent from or to over-rule the Provincial Ministry ought to be given in the Governor-General's discretion The Governor-General would thus become the arbiter between the Federal and the Provincial Governments and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention It cannot be assumed that the fault in cases of this kind will always lie with the Province the Federal Government may have been tactless or unwise and the Governor-General should not be under any constitutional obligation to take action against his better judgment if the effect would only be to accentuate or embitter the dispute

Governor-General's ultimate responsibility for peace of whole of India.

222. The White Paper proposes to empower the Governor-General in his discretion to issue instructions to the Governor of a Province as to the manner in which the executive power and authority in the Province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof[1] It has been suggested that in view of the special responsibility of the Governor to which we have referred above this proposal is superfluous We do not think that it is The Governor of a Province is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province and we think that but for the proposal to which we have referred his special responsibility for securing the execution of orders lawfully issued by the Governor General would necessarily be read as referring to the execution of orders issued by the Governor General within the sphere of the Governor's statutory functions. But to take one example which occurs to us a conspiracy in one Province to disturb the peace and tranquillity of another might well be outside the Governor's special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province and since we have no doubt that an ultimate and residuary responsibility for the peace and tranquillity of the whole of India must vest in the Governor General it

[1] White Paper Proposal 126

is plain that the latter's power to give directions to a Governor should be wide enough to cover this case, and that it should be obligatory on a Governor to give effect to those directions, even though it is the peace of a neighbouring Province and not his own which is endangered.

Inter-provincial relations

223 We do not observe any proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, for the determination of which the Federal Court is the obvious and necessary forum Yet it cannot be supposed that inter-provincial disputes will never arise, and we have considered whether it would not be desirable to provide some constitutional machinery for disposing of them At the present time the Governor-General in Council has the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both transferred and reserved subjects ; but plainly it would be impossible to vest such a power in the Governor-General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose. But after careful consideration we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settlement of disputes of the sort which we have in mind, and in our opinion the more prudent course would be to leave the Provinces free to develop such supplementary machinery as the future course of events may show to be desirable There will be necessarily many subjects on which inter-Provincial consultation will be necessary, as indeed has proved to be the case even at the present time, and we consider that every effort should be made to develop a system of inter-provincial conferences, at which administrative problems common to adjacent areas as well as points of difference may be discussed and adjusted Suggestions for a formal Inter-Provincial Council have been made to us, and we draw attention in later paragraphs of our Report[1] to a number of matters on which it is, in our view, important that the Provinces should co-ordinate their policy, in addition to the financial problem which we discuss hereafter [2] It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-governmental consultation Moreover, we think that it will be of vital importance to establish some such machinery at the very outset of the working of the new Constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools through failing to enlist

[1] *Infra*, paras 227, 305–309
[2] *Infra*, para 261

the active interest either of the Federal or the Provincial Governments both of whom will have many other more immediate preoccupations There is however much to be said for the view that, though some such machinery may be established at the outset it cannot be expected to take its final form at that time and that Indian opinion will be better able to form a considered judgment as to the final form which it should take after some experience in the working of the new Constitution For this reason we doubt whether it would be desirable to fix the Constitution of an Inter Provincial Council by statutory provisions in the Constitution Act but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation. We think further that although the Constitution Act should not itself prescribe the machinery for this purpose it should empower His Majesty s Government to give sanction by Order in Council to such co-ordinating machinery as it may have been found desirable to establish in order that at the appropriate time means may thus be available for placing these matters upon a more formal basis

224 There is however one subject with respect to which we are of opinion that specific provision ought to be made The Government of India has always possessed what may be called a common law right to use and control in the public interest the water supplies of the country and a similar right has been asserted by the legislation of more than one Province as regards the water supplies of the Province. Water supplies is now a Provincial subject for legislation and administration but the Central Legislature may also legislate upon it with regard to matters of inter provincial concern or affecting the relations of a Province with any other territory Its administration in a Province is reserved to the Governor in Council and is therefore under the ultimate control of the Secretary of State with whom the final decision rests when claims or disputes arise between one Provincial Government and another or between a Province and a State This control of the Secretary of State obviously could not continue under the new Constitution but it seems to us impossible to dispense altogether with a central authority of some kind

Provincial subject under the White Paper

225 The White Paper proposes to give to the Provinces exclusive legislative power in relation to water supplies irrigation and canals drainage and embankments water storage and water power and reserves no powers of any kind to the Federal Government or Legislature.[1] The effect of this is to give each Province complete powers over water supplies within the Province without any regard whatever to the interests of neighbouring Provinces The Federal Court would indeed have jurisdiction to decide any dispute between two Provinces in connection with water supplies if legal rights or interests were concerned but the experience of most countries has

[1] White Paper Appendix VI List II

shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved. It is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the prosperity, but the economic existence, of large tracts depends

Modification of White Paper proposals suggested

226 We do not think that it would be desirable, or indeed feasible, to make the control of water supplies a wholly Federal subject, but, for the reasons which we have given, it seems to us that complete provincialization might on occasion involve most unfortunate consequences We suggest, therefore, that where a dispute arises between two units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be empowered to adjudicate on the application We think, however, that the Governor-General, unless he thinks fit summarily to reject the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint The Tribunal would be appointed *ad hoc*, and would be an expert body whose functions would be to furnish the Governor-General with such technical information as he might require for the purposes of his decision and to make recommendations to him Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit We think also that provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another With this limitation we believe that the plan would be a workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy or with the principle that outside the federal sphere the States' relations will be exclusively with the Crown

Central research

227 We have found occasion in later paragraphs to draw attention to the importance of the co-ordination of research in connection with the special subjects of Forestry and Irrigation It is a matter very relevant to any consideration of the future relations between the Federal and Provincial Governments. Whatever criticisms may have been levelled in the past against an excessive centralisation of government in India, they can have little application to the facilities thereby created for the pooling of ideas and of

methods so as to enable the whole of India to benefit from the administrative experience of every part It would be deplorable if the establishment of Provincial Autonomy were to lead the Provinces to suppose that each could regard itself as self sufficient or to tempt the Centre to disinterest itself in the efforts which it has made in the past to collect and co-ordinate information for general use If our recommendations are adopted the existing central research institutions will remain under the exclusive control of the Federal Government but they can only flourish if assured that the interest and support of the Provincial and States Governments are still assured to them. The Statutory Commission made special reference to the Council of Agricultural Research which was established as a result of the recommendations of the Royal Commission on Agriculture in India and we agree with them in thinking that similar institutions might with advantage be established in other fields such as Public Health and Education.

APPENDIX (II)

Scheme for Election of British India Representatives to Council of State and House of Assembly.

Council of State

1 The British India representatives will number 150, elected in the manner described below, together with 6 members nominated by the Governor-General in his discretion

2 The members, other than those nominated, will be elected in three separate Divisions, A, B and C

Members in Division A will retire after three years from the date when the House is first constituted, and thereafter every nine years

Those in Division B after six years from that date and thereafter every nine years

Those in Division C after nine years from that date and thereafter every nine years

The members to be elected for each of the three Divisions will be allocated as follows —

	A	*B*	*C*	*Total.*
Madras	0	10	10	20
Bombay	8	0	8	16
Bengal	10	0	10	20
United Provinces	10	10	0	20
Punjab	8	8	0	16
Bihar	0	8	8	16
Central Provinces (with Berar)	0	8	0	8
Assam	0	5	0	5
North-West Frontier Province	0	0	5	5
Sind	5	0	0	5
Orissa	5	0	0	5
Coorg	0	0	1	1
Ajmer	0	0	1	1
Delhi	0	0	1	1
Baluchistan	0	0	1	1
Indian Christians	1	0	1	2
Anglo-Indians	0	0	1	1
Europeans	3	1	3	7
Total	50	50	50	150

3 The Indian Christian, Anglo-Indian and European members will be chosen by three Electoral Colleges of their own for the whole of British India, composed respectively of the Indian Christian, Anglo-Indian and European members of the Provincial Legislatures (including members from the Upper Houses of bicameral Provinces) The method of voting by the European Electoral College, when more than one seat is to be filled, will be the single transferable vote

4 In the Provinces of Madras, Bombay, United Provinces and Bihar the Muhammadan members of the Provincial Upper House voting alone will elect one member for each of the two Divisions of the Federal Upper House in which the Province is represented The remainder of the seats allocated to the Governors' Provinces, apart from these 8 seats, will be filled in the following manner —

(*a*) In the bicameral Governors' Provinces the members will be elected by all the members of the Provincial Upper House (except Indian Christian, Anglo-Indian and European members) by means of the single transferable vote.

(*b*) In the unicameral Governors Provinces where Upper Houses do not exist, the members will be elected by a specially constituted Electoral College by means of the single transferable vote The composition of these Electoral Colleges will be as follows —

Province	*General*	*Sikh*	*Muhammadan*	*Total*
Punjab	16	11	30	57
Central Provinces (with Berar)	31	—	5	36
Assam	21	—	12	33
North-West Frontier Province	5	1	19	25
Sind	10	—	18	28
Orissa	27	—	3	30

Members of the Electoral Colleges will be chosen by direct election from territorial communal constituencies. The franchise will be similar to that employed in other Provinces for direct election to the Provincial Upper House. The question of special provision for the Depressed Classes among the General seats requires consideration especially in relation to the Central Provinces.

5 Special provisions will be necessary for the selection of the representative from Chief Commissioners Provinces except in the case of Coorg where the representative will be elected by members of the Coorg Legislature

6 When the Federal Council of State is constituted for the first time on that occasion and on that occasion only members of all three Divisions will have to be elected at the same time There will, therefore in the case of six Provinces be candidates for two different Divisions simultaneously The election will take place first for the Division which will be re-elected later than the other one. Those candidates who are not successful in the election for that Division will form the candidates for the immediately following election for the other Division.[1]

7 Casual vacancies among the elected members of the Council of State will, so long as communal representation is retained as a feature of the Constitution, be filled by election by those members of the Provincial Upper House (or Electoral College) who are members of the community to which the vacating member belongs as proposed in the White Paper [2]

8 It will be observed that, although one-third of the Council of State will be renewed at a time, the representatives of any given Province will be renewed half at a time in the larger Governors Provinces and the whole at a time in other Provinces The object of this arrangement is to avoid reducing the number of seats to be filled at any Provincial election to an extent which would be likely to have the effect of producing inequitable results from the system of proportional representation.

9 The object of the provision of eight seats to be filled by Muhammadan electors only is to secure that the Muhammadan community should be in a position to secure one third of all the British India seats if every Muhammadan elector in using first and succeeding preferences gave priority to all candidates of his own community

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[1] It will probably be found possible to avoid a double reference to the voters. After the election to one Division is completed, the election to the other Division could presumably take place on the basis of the original voting papers the names of the candidates already successful for the other Division being eliminated and the preferences on the voting papers being renumbered accordingly

[2] White Paper Proposal 28.

We agree with the proposal in the White Paper[1] that the Muhammadan community should be placed in a position in which they could achieve this result, and it is unlikely that they would be able to do so without the allocation to them of these few specifically communal seats This special provision is analogous to that which the Secretary of State for India has proposed for the same purpose in modification of Appendix I of the White Paper[2]

10 In the Governors' Provinces a candidate will be qualified for election to the Council of State if he (or she) is qualified for election to the Provincial Upper Chamber (or Electoral College, as the case may be)

Special provisions will be required for the qualifications of other candidates.

Federal House of Assembly

11 The British India representatives in the Assembly will number 250, elected in the manner described below

12 The allocation of seats between Provinces and between the various special interests and communities will be in accordance with the numbers set out in the Table in Appendix II of the White Paper

13 The method of election to the special interest seats, that is to say, to the special seats assigned for commerce and industry, landholders and labour, will be as proposed in Appendix II to the White Paper

14 In the Governors' Provinces, election to the seats in the Assembly allocated as General or Muhammadan will be by the members of the Provincial Lower House who hold respectively General or Muhammadan seats in that House Members who hold special interest seats in the Provincial Lower House will not participate In the Punjab those members who hold Sikh seats in the Provincial Legislature will elect to the six Sikh seats from the Punjab in the Assembly Subject to the following provision relating to the Depressed Classes, the method of voting within each of the above groups of electors will be the single transferable vote

15 In the case of General seats, it would be a simplification if there were no seats reserved for the Depressed Classes, reliance being placed on the proportional representation system to secure a due share of the General seats for the members of the Depressed Classes Unless, however, the adoption of such a course were agreed between the caste Hindus and Depressed Classes, we regard it as desirable to avoid disturbing, so far as possible, the arrangements in the White Paper for Depressed Classes representation in the Federal Lower House which are based on the Poona Pact Accordingly, out of the General seats there will be reserved for the Depressed Classes the number of seats indicated in Appendix II to the White Paper

16 The following seems to be a possible method for combining procedure for reservation of seats with the use of the single transferable vote After the voting papers have been received, and before the single transferable vote procedure is applied, those Depressed Class candidates, up to a number equal to that of the reserved seats, who receive the highest number of first preferences would be declared to be elected The single transferable vote procedure would then be applied for the election to the remaining general seats It is necessary to provide, in accordance with the Poona Pact, that the only candidates qualified to be elected to the reserved seats should be those elected by a primary to a number equal to four times the number of reserved seats In order to constitute a primary of adequate size, we think that it might consist, not only of those members of the Provincial Lower House

[1] White Paper, Introd , para 18
[2] Evidence Answer to Question 7811

who hold the seats reserved therein for Depressed Classes but also of those who were successful candidates at the primary Depressed Class elections for the Provincial Lower House though they did not secure seats at the final election for that House.

17 The seats allocated to Indian Christians, Anglo-Indians, Women and Europeans will be filled by election by four Electoral Colleges of their own composed of all those who hold respectively Indian Christian, Anglo-Indian, Women s and European seats in the Provincial Lower Houses Those who hold special interest seats in those Houses will not participate. The Electoral Colleges, composed of members from all the Provinces will elect separately the member from each Province to which is allocated an Indian Christian [1] Anglo-Indian or European seat. In the case of the Electoral College composed of the women members of the Provincial Lower Houses, three seats will be reserved for Muhammadan women and one seat for an Indian Christian woman.

18. Special provisions will be necessary for the selection of the representatives from Chief Commissioners Provinces except in the case of Coorg, where the representative will be elected by members of the Coorg Legislature.

19 In Governors' Provinces (and Coorg) a candidate will be qualified for election to a seat in the Federal Assembly (other than a special interest seat) if he is qualified for election to the Provincial Lower House for a General, Muhammadan or Sikh seat, as the case may be. Qualifications for a candidate for those General seats which are reserved for the Depressed Classes will be as described above

Special provisions will be required for the qualifications of candidates in Chief Commissioners Provinces other than Coorg

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[1] In Madras there are two Indian Christian seats. Voting for these will be by means of the single transferable vote.

ANNEXURE A

LIST I

Name of State	*No of Seats in the Upper House*	*Population*	*No of Seats in the Lower House*
(*a*) Hyderabad	5	14 436 148	14
Mysore	3	6 557 302	7
Kashmir	3	3 646 243	4
Gwalior	3	3 523 070	4
Baroda	3	2,443 007	3
Kalat	2	342,101	1
Travancore	2	5 095 973	5
Cochin	2	1,205 016	1
Rampur	1	465 225	1
Benares	1	391 272	1
Sikkim	1	109 808	—
(*b*) *Rajputana Agency* (List II)	19	11,218 390	17
Central India Agency (List III)	17	6 368 035	14
Western India and Gujarat States Agencies and certain States from Rajputana and Deccan States Agencies (List IV)	13	4 584 878	12
Deccan States and Kolhapur Agency (List V)	5	2,322 314	5
Punjab States Agency and Tehri Garhwal (List VI)	11	5 048 984	11
Bengal and Assam States (List VII)	2	1 418 942	3
Madras States Group (Pudukkottai Banganapalle and Sandur) (List VIII)	1	453 495	1
Eastern States Agency—Bihar and Orissa States (14 *States*), and *Central Provinces States* (9 *States*) (List IX)	3 } 2 }	4 100 480 2,193 661	9 } 5 }
(*c*) *Non salute States not provided for above* (List X)	5	2,809 456	7
	104		125

LIST II

Rajputana

Upper House

Name of State	*No of Seats*
Udaipur	2
Jaipur	2
Jodhpur	2
Bikaner	2
Alwar	1
Kotah	1
Bharatpur	1
Tonk	1

Lower House

Name of State	*Population*	*No of Seats*
Udaipur	1 566 910	2
Jaipur	2,631 775	3
Jodhpur	2,125 982	2
Bikaner	936,218	1
Alwar	749 751	1
Kotah	685 804	1
Bharatpur	486 954	1
Tonk	317 360	1

LIST III—*continued*

Upper House

Name of State	*No of Seats*
Group II	
Jaora Ratlam	1
(11 gun States in group of 2—alternate representation)	
Panna Ajaigarh	1
(11 gun States in group of 3—alternate representation)	
Charkhari Chhatarpur Baoni	1
(11 and 9-gun States in group of 5—alternate representation)	
Bijawar Samthar Maihar Nagod Baraundha	1
(11 gun States in group of 2—alternate representation)	
Barwani Ali Rajpur	1
(11 gun States in group of 3—alternate representation)	
Jhabua Sailana Sitamau	1
(11 gun States and 9-gun State of Khilchipur in group of 3—alternate representation)	
Rajgarh Narsingarh Khilchipur	1
	17

Lower House

Name of State	*Population*	*No of Seats*
Group III		
Jaora Ratlam	100 166 107 321	1
	207 487	
Group IV		
Panna Ajaigarh	212,130 85 895	1
	298 025	
Group V		
Charkhari Chhatarpur Baoni	120 351 161 267 19 132	1
	300 750	
Group VI		
Bijawar Samthar Maihar Nagod Baraundha	115 852 33 307 68 991 74 589 16 071	1
	308 810	
Group VII		
Barwani Ali Rajpur	141 110 101 963	1
	243 073	
Group VIII		
Jhabua Sailana Sitamau	145 522 35 223 28 422	1
	209 167	
Group IX		
Rajgarh Narsingarh Khilchipur	134 891 113 873 45 583	1
	294 347	11

LIST IV

Western India and Gujarat States; States of Palanpur, and Danta from the Rajputana Agency; and Janjira from the Deccan States Agency

Upper House

Name of State	*No. of Seats*
Cutch	1
Idar	1
Nawanagar	1
Bhavnagar	1
Junagadh	1
(13- and 11-gun States in groups of 2—alternate representation)	
Group I	
Rajpipla, Palanpur	1
Group II	
Dhrangadhra, Gondal	1
Group III	
Porbandar, Morvi	1
(11- and 9-gun States in groups of 3—alternate representation)	
Group I	
Radhanpur, Wankaner, Palitana	1
Group II	
Cambay, Janjira, Dharampur	1
(9-gun States in groups of 3 and 4—alternate representation)	
Group I	
Baria, Chhota Udepur, Sant, Lunawada	1
Group II	
Balasinor, Bansda, Sachin, Jawhar	1
Group III	
Dhrol, Limbdi, Wadhwan, Rajkot, Danta	1
	13

Lower House

Name of State	*Population*	*No of Seats*
Cutch	514,307	1
Idar	262,660	1
Nawanagar	409,192	1
Bhavnagar	500,274	1
Junagadh	545,152	1
Group I		
Rajpipla	206,114	1
Palanpur	264,179	
	470,293	
Group II		
Dhrangadhra	88,961	1
Gondal	205,846	
	294,807	
Group III		
Porbandar	115,673	1
Morvi	113,023	
	228,696	
Group IV		
Radhanpur	70,530	1
Wankaner	44,259	
Palitana	62,150	
	176,939	
Group V		
Cambay	87,761	1
Janjira	110,366	
Dharampur	112,051	
	310,178	
Group VI		
Baria	159,429	1
Chhota Udepur	144,640	
Sant	83,538	
Lunawada	95,162	
	482,769	
Group VII		
Balasinor	52,525	1
Bansda	18,807	
Sachin	22,107	
Jawhar	57,280	
Dhrol	27,639	
Limbdi	40,088	
Wadhwan	42,602	
Rajkot	75,540	
Danta	23,023	
	359,611	12

LIST V

Deccan States and Kolhapur

Upper House

Name of State	*No of Seats*
apur	2
ara	
olham	
tes in a group of	
gun States representa	
4—alternate	
tion)	
angli	1
awantwadi	
udhol	
hor	
Non-salute States in groups of 5—alternate representation)	
Group I	
amkhandi	1
iraj (Senior)	
iraj (Junior)	
urundwad (Senior)	
urundwad (Junior)	
Group II	
kalkot	1
haltan	
ath	
undh	
amdurg	
	5

Lower House

Name of State	*Population*	*No of Seats*
Kolhapur	957 137	1
Group I		
Sangli	258,512	1
Bhor	141,546	
	400 058	
[illegible]		
Group II		
Sawantwadi	230 589	1
Mudhol	62,860	
	293 449	
Group III		
Jamkhandi	114 282	1
Miraj (Senior)	93 957	
Miraj (Junior)	40 686	
Kurundwad (Senior)	44 251	
Kurundwad (Junior)	39 563	
	332 739	
Group IV		
Akalkot	92 636	1
Phaltan	43,285	
Jath	91 102	
Aundh	76,507	
Ramdurg	35 401	
	338 931	5

LIST VI

Punjab States and Tehri-Garhwal

Patiala	2
Bahawalpur	2
Khairpur	1
Kapurthala	1
Jind	1
Nabha	1
(11-gun States and 9-gun State of Loharu in groups of 3—alternate representation)	
Group I	
Mandi, Bilaspur, Suket	1
Group II	
Tehri-Garhwal, Sirmur, Chamba	1
Group III	
Faridkot, Malerkotla, Loharu	1
	11

Patiala	1,625,520	2
Bahawalpur	984,612	1
Khairpur	227,183	1
Kapurthala	316,757	1
Jind	324,676	1
Nabha	287,574	1
Tehri-Garhwal	349,573	1
Group I		
Mandi	207,465	1
Bilaspur	100,994	
Suket	58,408	
	366,867	
Group II		
Sirmur	148,568	1
Chamba	146,870	
	295,438	
Group III		
Faridkot	164,364	1
Malerkotla	83,072	
Loharu	23,338	
	270,774	11

LIST VII

Bengal and Assam States

Cooch Behar	1
(Alternate representation)	
Tripura, Manipur	1
	2

Cooch Behar	590,886	1
Tripura	382,450	1
Manipur	445,606	1
		3

LIST VIII

Madras States

Upper House

Name of State	*No of Seats*
(Group representation)	
Pudukkottai, Banganapalle, Sandur	1

Lower House

Name of State	*Population*	*No of Seats*
Pudukkottai	400,694	1
Banganapalle	39,218	
Sandur	13,583	
	453,495	

LIST IX *

Eastern States Agency

(a) *Bihar and Orissa States*

(9-gun States in a group of 4—alternate representation)

States	Seats
Mayurbhanj, Patna, Kalahandi, Sonepur	1

(Non salute States in groups of 5—alternate representation)

Group I

States	Seats
Keonjhar, Dhenkanal, Nayagarh, Talcher, Nilgiri	1

Group II

States	Seats
Gangpur, Bamra, Seraikela, Baud, Bonai	1
	3

State	Population	Seats
Mayurbhanj	889 603	1
Patna	566 924	1
Kalahandi	513 716	1
Sonepur	237 920	1
Keonjhar	460 609	1
Gangpur	356 674	1
Dhenkanal	284 326	3 (Dhenkanal to Bamra)
Nayagarh	142 406	
Seraikela	143 525	
Baud	135 248	
Talcher	69 702	
Bonai	80 186	
Nilgiri	68 594	
Bamra	151 047	
	1 892 317	
		9

(b) *Central Provinces*

(Non-salute States in a group of 4—alternate representation.)

States	Seats
Bastar, Surguja, Raigarh, Nandgaon	1

(Non-salute States in a group of 5—alternate representation.)

States	Seats
Khairagarh, Jashpur, Kanker, Sarangarh, Korea	1
	2

State	Population	Seats
Bastar	524 721	1
Surguja	501 939	1
Raigarh	277 569	3 (Raigarh to Nandgaon)
Khairagarh	157 400	
Jashpur	193 698	
Kanker	136 101	
Sarangarh	128,967	
Korea	90,886	
Nandgaon	182,380	
	1 167 001	5

LIST X

Non-Salute States

Upper House

Name of State	*No of Seats*
States in Western Kathiawar and Eastern Kathiawar Agencies	1
States in Sabar Kantha, Gujarat States and Deccan States Agencies	1
Bihar and Orissa and Central Provinces States (Eastern States Agency)	1
Central India States and Lawa (Rajputana) .	1
Simla Hill States and Kalsia, Pataudi and Dujana ..	1
	5

Lower House

Name of State	*Population*	*No of Seats*
States in Western Kathiawar Agency	421,435	1
States in Eastern Kathiawar and Old Banas Kantha Agencies	467,096	1
States in Old Mahi Kantha, Gujarat States and Deccan States Agencies	377,413	1
Bihar and Orissa and Central Provinces States (Eastern States Agency)	822,200	2
Central India States and Lawa (Rajputana)	283,525	1
Simla Hill States and Kalsia, Pataudi and Dujana	437,787	1
		7

ANNEXURE B

Note —The left-hand figures are those of the population in thousands

Salute—21 guns

State		Upper House	Lower House
Hyderabad	14 436	5	14
Mysore	6 557	3	7
Kashmir	3 646	3	4
Gwalior	3 523	3	4
Baroda	2,443	3	3

Salute—19 guns

Travancore	5 096	2	5
Udaipur	1 567	2	2
Indore	1 318	2	2
Kolhapur	957	2	1
Bhopal	730	2	1
Kalat	342	2	1

Salute—17 guns

Jaipur	2,632	2	3
Jodhpur	2 126	2	2
Patiala	1 626	2	2
Rewa	1 587	2	2
Cochin	1 205	2	1
Bahawalpur	985	2	1
Bikaner	936	2	1
Kotah	686	1	1
Cutch	514	1	1
Bharatpur	487	1	1
Tonk	317	1	1
Bundi	217	1	1/2
Karauli	141	1	1/2

Salute—15 guns

Alwar	750	1	1
Rampur	465	1	1
Orchha	315	1	1/2
Idar	263	1	1
Dholpur	255	1	1/2
Dhar	243	1	1/3
Dungarpur	228	1/2	1/2
Khairpur	227	1	1
Banswara	225	1/2	1/2
Sirohi	217	1	1/2
Datia	159	1	1/2
Sikkim	110	1	—
Kishengarh	86	1/2	1/2
Dewas (Senior)	83	1/2	1/3
Partabgarh	77	1/3	1/3
Jaisalmer	76	1/2	1/2
Dewas (Junior)	70	1/2	1/3

Salute—13 guns

State		Upper House	Lower House
Cooch Behar	591	1	1
Junagadh	545	1	1
Bhavnagar	500	1	1
Nawanagar	409	1	1
Benares	391	1	1
Tripura	382	1/2	1
Jind	325	1	1
Kapurthala	317	1	1
Nabha	287	1	1
Palanpur	264	1/2	1/2
Rajpipla	206	1/2	1/2
Porbandar	116	1/2	1/2
Jhalawar	108	1/3	1/3
Ratlam	107	1/2	1/2
Jaora	100	1/2	1/2
Dhrangadhra	89	1/2	1/2

Salute—11 guns

Manipur	446	1/2	1
Pudukkottai	401	group	1/3
Tehri-Garhwal	350	1/3	1
Panna	212	1/2	1/2
Mandi	207	1/3	1/3
Gondal	206	1/2	1/2
Faridkot	164	1/3	1/3
Chhatarpur	161	1/3	1/3
Sirmur	149	1/3	1/2
Chamba	147	1/3	1/2
Jhabua	146	1/3	1/3
Barwani	141	1/2	1/2
Rajgarh	132	1/3	1/3
Charkhari	120	1/3	1/3
Bijawar	116	1/5	1/5
Narsingarh	114	1/3	1/3
Morvi	113	1/2	1/2
Janjira	110	1/3	1/3
Alirajpur	102	1/2	1/2
Bilaspur	101	1/3	1/3
Cambay	88	1/3	1/3
Ajaigarh	86	1/2	1/2
Malerkotla	83	1/3	1/3
Radhanpur	71	1/3	1/3
Sukot	58	1/3	1/3
Wankaner	44	1/3	1/3
Sailana	35	1/3	1/3
Samthar	33	1/5	1/5
Sitamau	28	1/3	1/3
Baoni	19	1/3	1/3

Salute—9 guns

State		Upper House	Lower House
Mayurbhanj	890	1/4	1
Patna	567	1/4	1
Kalahandi	514	1/4	1
Sangli	259	1/4	1/2
Sonepur	238	1/4	1
Sawantwadi	231	1/4	1/2
Baria	159	1/4	1/4
Chhota Udepur	145	1/4	1/4
Bhor	142	1/4	1/2
Dharampur	112	1/3	1/3
Lunawada	95	1/4	1/4
Sant	84	1/4	1/4
Rajkot	76	1/5	1/9
Nagod	75	1/5	1/5
Maihar	69	1/5	1/5
Mudhol	63	1/4	1/2
Palitana	62	1/3	1/3
Jawhar	57	1/4	1/9
Shahpura	54	1/3	1/3
Balasinor	53	1/4	1/9
Bansda	49	1/4	1/9
Khilchipur	46	1/3	1/3
Wadhwan	43	1/5	1/9
Limbdi	40	1/5	1/9
Banganapalle	39	group	1/3
Dhrol	28	1/5	1/9
Loharu	23	1/3	1/3
Danta	23	1/5	1/9
Sachin	22	1/4	1/9
Baraundha	16	1/5	1/5

Non-salute

State		Upper House	Lower House
Bastar	525	1/4	1
Surguja	502	1/4	1
Keonjhar	461	1/5	1
Gangpur	357	1/5	1
Dhenkanal	284	1/5	3/8
Raigarh	278	1/4	3/7
Jashpur	194	1/5	3/7
Nandgaon	182	1/4	3/7
Khairagarh	157	1/5	3/7
Bamra	151	1/5	3/8
Seraikela	144	1/5	3/8
Nayagarh	142	1/5	3/8
Kanker	136	1/5	3/7
Baud	135	1/5	3/8
Sarangarh	129	1/5	3/7
Jamkhandi	114	1/5	1/5
Miraj (Senior)	94	1/5	1/5
Akalkot	93	1/5	1/5
Jath	91	1/5	1/5
Korea	91	1/5	3/7
Bonai	80	1/5	3/8
Aundh	76	1/5	1/5
Talcher	70	1/5	3/8
Nilgiri	69	1/5	3/8
Kurundwad (Senior)	44	1/5	1/5
Phaltan	43	1/5	1/5
Miraj (Junior)	41	1/5	1/5
Kurundwad (Junior)	40	1/5	1/5
Ramdurg	35	1/5	1/5
Sandur	14	group	1/3

SECTION V

SPECIAL SUBJECTS

(1) The Distribution of Legislative Powers

Importance of the subject.

228 In an earlier part of this Report we have discussed briefly and in general terms our conception of a statutory distribution of legislative powers between the Centre and the Provinces as an essential feature of Provincial Autonomy and as being itself the means of defining its ambit But the precise method by which this general purpose is to be effected is a matter of such paramount importance to the working of the Constitution which we envisage as to demand more detailed examination.

The plan of a statutory delimitation of legislative powers.

229 We have already explained[1] that the general plan of the White Paper which we endorse is to enumerate in two lists the subjects in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction and to enumerate in a third list the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers—the powers of a Provincial Legislature in relation to the subjects in this list extending of course only to the territory of the Province. The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces At present the Central Legislature has the legal power to legislate on any subject even though it be classified by rules under the Government of India Act as a Provincial subject and a Provincial Legislature can similarly legislate for its own territory on any subject even though it be classified as a Central subject for the Act of each Indian Legislature Central or Provincial requires the assent of the Governor-General and that assent having been given section 84 (3) of the Government of India Act provides that the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be If our recommendations are adopted an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed by a Provincial Legislature and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Federal Legislature and to the extent to which either Legislature invades the province of the other its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive List federal or provincial as the case may be. The questions which may arise

[1] *Supra* para. 50

as to the validity of legislation in the concurrent field are more complicated, and we shall discuss them later ; but here, also, disputes as to the validity of legislation will in the last resort rest with the Courts

Any other plan inconsistent with Provincial Autonomy

230 We do not disguise the fact that these proposals will open the door to litigation of a kind which has hitherto been almost unknown in India, nor have we forgotten that the Statutory Commission expressed the hope that the provisions of the existing Act which we have mentioned above would be preserved [1] As we shall explain, our recommendations will have the effect of preserving, in the limited sphere of the concurrent field, the main feature of the existing system, but we feel no doubt that the White Paper correctly insists upon a statutory allocation of exclusive jurisdictions to the Centre and the Provinces respectively as the only possible foundation for the Provincial Autonomy which we contemplate. We are fully sensible of the immense practical advantages of the present system, and of the uncertainties and litigation which have followed elsewhere from a statutory delimitation of competing jurisdictions, but we are satisfied that a relationship between Centre and Provinces, in which each depends in the last resort for the scope of its legislative jurisdiction on the decision of the Central Executive as represented by the Governor-General, would form no tolerable basis for an enduring Constitution and would be inconsistent with the whole conception of autonomous Provinces.

The revised Lists

231 The Lists, as they appear in Appendix VI to the White Paper, are described as illustrative and do not purport to be either complete or final Since their publication, however, they have been subjected to a careful scrutiny by the Government of India and the Provincial Governments, whose criticisms have in their turn been examined by the framers of the original Lists, and the results of this scrutiny and examination have been placed at our disposal In the light of this further information we are satisfied (though the final form must be a matter for the draftsman) that the revised Lists which we append to this chapter represent a workable and appropriate allocation of legislative powers

Two Lists or one as the method of defining exclusive jurisdictions

232 We confine our attention for the moment to Lists I and II, which define respectively the exclusive jurisdiction of the Centre and of the Provinces We believe that the attempt which these Lists represent to allocate by enumeration with any approach to completeness the functions of legislation, including taxation, to rival Legislatures is without precedent In other Constitutions the method adopted has usually been to specify exhaustively the subjects allocated to one Legislature and to assign to the other the whole of the unspecified residue But, as we have said elsewhere, the method adopted in the White Paper has one definite constitutional advantage,

[1] Report, Vol. II, para. 154

apart from its virtues as a compromise between two sharply opposing schools of thought in India We are ourselves convinced that the laborious and careful enumeration of both sets of subjects has secured that in fact no material and unforeseen accretion of power either to Centre or Provinces would result from the elimination of one List or the other and we are satisfied that the process has reduced the residue to proportions so negligible that the apprehensions which have been felt on one side or the other are without foundation Recognising the strength of Indian feeling on this matter we are unwilling to disturb the compromise embodied in the White Paper the effect of which is to empower the Governor-General acting in his discretion to allocate to the Centre or Province as he may think fit the right to legislate on any matter which is not covered by the enumeration in the Lists We are conscious of the objections to this proposal. It is inconsistent with our desire to see a statutory delimitation of legislative jurisdictions and the power vested in the Governor General necessarily empowers him not merely to allocate an un enumerated subject but also in so doing to determine conclusively that a given legislative project is not in fact covered by the enumeration as it stands —a question which might well be open to argument though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court. On the other hand it must not be forgotten that an enumeration of the powers of the Centre and the allocation of the unspecified residue to the Provinces would involve not only the reservation to the Federal Legislature of a generally defined overriding power but also the consequence that the Provinces would acquire the right to assume to themselves any unspecified sources of taxation which might hereafter be devised and if this position were accepted it might well be necessary to deal separately and by a different method with the power to impose taxation We recommend however as some mitigation of the uncertainty arising from the inevitable risks of overlapping between the entries in the Lists that the Act should provide that the jurisdiction of the Federal Legislature shall not withstanding anything in Lists II and III extend to the matters enumerated in List I and that the jurisdiction of the Federal Legislature under List III shall notwithstanding anything in List II extend to the matters enumerated in List III The effect of this will be that in case of conflict between entries in List I and entries in List II the former will prevail and in case of conflict between entries in List III and entries in List II the former will prevail so far as the Federal Legislature is concerned.

The Concurrent List.

233 We turn now to the problems presented by the Concurrent List We have already explained our reasons for accepting the principle of a Concurrent List but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it presents a difficult problem. In the first place it appears to us that

while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with provincial policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. At the same time, it is axiomatic that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that, in case of conflict between a central and a provincial Act in the concurrent field, the former must prevail. But an unqualified provision to that effect would enable an active Centre to oust provincial jurisdiction entirely from the concurrent field, and would thus defeat one of the main purposes of the latter. We have already expressed our approval of the device adopted in the White Paper for the purpose of meeting this difficulty, under which the Governor-General, acting in his discretion, is made the arbiter between conflicting claims of Centre and Provinces. This in effect preserves, in the limited sphere of the concurrent field, the existing legislative relation between Centre and Provinces which excited the admiration of the Statutory Commission; and we think that it would be a mistake to attempt to limit the powers of the Central Legislature in this field by any statutory definition of the purpose for which, or the conditions subject to which, they are to be used.

Relations between Centre and Provinces in the concurrent field

234. There are obvious attractions to those who wish to see the freedom and initiative of the Provinces as unfettered as possible in an attempt to ensure by provisions in the Constitution Act that the powers of the Centre in the concurrent field are to be capable of use only where an All-India necessity is established, and where the enactment in question can appropriately be, and in fact is, applied to every Province. We are clearly of opinion that such a restriction, apart from the prospect of litigation which it opens up, would tend to defeat the objects we have had in view in revising the List of concurrent subjects. For similar reasons we should strongly deprecate any provision requiring the prior assent of the Provinces, or of a majority of them, as a condition precedent to the exercise by the Centre of its powers in this field, or the condition suggested in the White Paper that the Centre is to be debarred from so using its powers in respect of a concurrent subject as to impose financial obligation on the Provinces. We recognise that, in practice, it will be impossible for the Centre to utilise its powers in the concurrent field without satisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied with its provisions and are prepared, in cases where it will throw extra burdens upon provincial resources, to recommend to their own Legislatures the provision of the necessary supply; but we consider that the practical relationships which are to develop between Centre

and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions Nevertheless we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government before initiating legislation of the kind which we are discussing should ascertain provincial opinion by calling into conference with themselves representatives of the Governments concerned At the same time we recommend that although no statutory limitation should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field the Governor General should be given guidance in his Instrument of Instructions as to the manner in which he is to exercise the discretion which the White Paper proposes to vest in him in relation to matters arising in the concurrent field.

Proposal that Acts should not be open to challenge after a specific period.

235 We observe with interest a proposal in the White Paper that in order to minimize uncertainties of law and opportunities for litigation provision should be made for limiting the period within which the validity of an Act may be called in question on the ground that it was not within the competence of the Legislature which enacted it.[1] We know of no precedent for a provision of this kind though there are enactments in this country which make certain forms of subordinate or delegated legislation unchallengeable in the Courts after a specified period We are not disposed to reject it on that account but if it is adopted we think that the period of limitation should be adequate and not less than five years

Legislative relations between the Federal Legislature and the States.

236 Our observations have been hitherto directed solely to the legislative relations between the Federation and the Provinces. The relations between the Federation and the States in this sphere will not and cannot be the same. The effect of the proposals in the White Paper is that while every Act of the Federal Legislature regulating any subject which has been accepted by a State as a federal subject will apply *proprio vigore* in that State as they will apply in a Province a duty identical with that imposed upon Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions yet this jurisdiction of the Federal Legislature in the States will not be exclusive It will be competent for the States to exercise their existing powers of legislation in relation to such a subject with the proviso that in case of conflict between a State law and a Federal law on a subject accepted by the State as federal the latter will prevail. We understand that the States who are free agents in this respect are likely in the first instance to take their stand upon the Federal List proper and to accept the jurisdiction of the Federal

[1] White Paper Proposal 118.

Legislature in nothing which is outside the boundaries of that List; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as bankruptcy and insolvency, in the Concurrent List.

Formal changes i the revise Lists

237 We desire to draw attention to certain points in connection with the revised Lists of Subjects We may observe in the first place that certain of the entries in List I as it appears in the White Paper are so framed as to provide for variation of treatment in relation to the States The revised List is, however, framed in terms which are appropriate to India as a whole, and makes no attempt to meet the case of States which might not be prepared to accept the whole subject without variation This we are satisfied is the more convenient course, the natural medium for recording any variation from the general content of a federal subject, whether in respect of the acceding States in general or of an individual State, being each Ruler's Instrument of Accession Another general principle which has been observed in revising the Lists, and which has involved a number of minor modifications, is the desirability of defining every entry in terms appropriate to a legislative power and of omitting all entries which are in essence descriptive of executive power Such expressions as "control" and "regulation" have therefore been avoided, and we assume that the draftsman of the Constitution Bill will find it necessary to define in some appropriate manner, elsewhere in the Bill, the scope of the executive or administrative authority of the Federal and of the Provincial Governments respectively In any case we recommend, in consonance with what we have said in earlier paragraphs, that the Act should contain an express provision declaring the administration of subjects in List I to be (subject to the right of the Federal Legislature to devolve any administrative powers for the purpose upon the Provincial Governments) a federal, and the administration of subjects in Lists II and III a provincial, function

Alteration suggested the entrie relating to the defen of India

238 The revised Lists also contain a number of changes of substance. Apart from a considerable revision of the language of the first five entries of List I, as they appear in the White Paper, which collectively define the ambit of the reserved subject of Defence, the first entry, "the common defence of India in time of an emergency declared by the Governor-General" has been omitted entirely. The intention of this item was, we understand, to give the Federal Legislature (and, in consequence, the Governor-General for the purposes of his personal legislative power) extensive powers on the lines of the English Defence of the Realm Act. We fully agree that it is essential that such a power should be vested in the Federal authorities, but we are of opinion that it should not be left to be deduced from a schedule of legislative powers, but should be the subject of an express provision in the body of the Act We are informed that it was only by a

majority of one that five Judges of the High Court of Australia decided that the power to legislate for defence in the Commonwealth Constitution Act justified legislation on the lines of the Defence of the Realm Act and the provision which we recommend in order to place this vital matter beyond doubt should make it clear that the *emergency power in question is not limited to* defence in the sense of repelling external aggression but that it covers internal disturbance also and that where an emergency *has been declared by the Governor-General the Federal Legislature* may make on any subject laws which will override any laws which conflict with them the Governor-General s personal legislative power being of course co-extensive in this respect with the power of the Federal Legislature. As an additional safeguard we would require that every proposal for legislation in the exercise of this power should be subject to the previous consent of the Governor General. We recognise that the inclusion of internal disturbance (which should be defined in terms which will ensure that for this purpose it must be comparable in gravity to the repelling of external aggression) among the circumstances which in an emergency will enable the Governor-General to confer upon himself or upon the Federal Legislature as the case may be the power to invade the exclusively provincial sphere and to override provincial legislation within that sphere may be criticized as a derogation from the general plan of Provincial Autonomy which we advocate but in the absence of such a power we could not regard the Governor-General as adequately armed to discharge the ultimate responsibility which rests upon him for the peace and tranquillity of the whole of India.

The Railway Police.

239 We think it right to take this opportunity of drawing attention to the control of Railway Police as settled by the distribution of subjects Railway Police in India is at present classified as a provincial subject *but the Central Government retains under the* existing Devolution Rules the power to determine conditions as regards limits of jurisdiction and contributions by the Railways to the cost of maintenance. We are informed that for many years past the question of the allocation of the cost of the Railway Police between the Provincial Governments on the one hand and the Railways on the other has been a subject of controversy and we have considered the best means of avoiding or at all events mitigating such controversies under the new Constitution. One course which has the *obvious attractions of theoretical simplicity would* be to make the policing of the Railways along with the general control of Railways an exclusively federal subject thereby making the Federal Government solely responsible for the control of the administration and for the financing of the whole of the Railway Police. We are satisfied however that such an arrangement, which would reverse a practice of many years standing would gravely prejudice the efficiency not merely of the Railway Police but of the Provincial Police as well. It is essential that the

regular Police Force of a Province should act in close co-operation with the separately organised Railway Police and that both should be subordinate to the same Inspector-General This result could not be secured if the control of the two bodies were in separate hands. We feel no doubt, therefore, that the right solution is to classify Railway Police as an exclusively Provincial subject, that the Railway Police Force of each Province should be financed in the main from Provincial revenues, but that there should be as at present a contribution from the Federal Government to the Provinces, which would, in fact, consist of the appropriate contribution from the Railways, and the amount of which would necessarily have to be determined by the Federal Government But, although the administration of the Railway Police Force itself would thus remain an exclusive responsibility of the Provinces, it is clear that inefficiency or inadequacy of strength in the Railway Police would at once affect the administration of the Federal subject of Railways, and we are satisfied that the recommendations which we have made elsewhere[1] would secure to the Federal Government adequate means of ensuring that the effective administration of the Federal subject of Railways did not suffer through inadequacy or inefficiency on the part of the Railway Police The Federal Government would be entitled, if it felt called upon to do so, to direct any or all of the Provincial Governments so to order its Railway Police as to bring them up to the requisite standard of efficiency, and there would be an ultimate right residing in the Governor-General, at his discretion, in case directions from his Government to any or all of the Provincial Governments on the subject of the administration, the efficiency, or the strength, of the Railway Police were not complied with, to give the necessary orders to the Governor, which the latter, in virtue of his special responsibility to secure the execution of orders lawfully issued by the Governor-General, would be in a position to get executed both administratively and so far as supply was concerned The position is different in the States, where for the most part jurisdiction over railway lands has been ceded to the Crown and is exercised either through Police specially appointed for that purpose or through the agency of Provincial Railway Police In cases where railway jurisdiction has been retained and is exercised by the State, the proposals in the White Paper[2] defining the administrative relations between the Federal Government and the States provide the Governor-General with an appropriate corresponding power to secure the same result as that to be secured under our proposal in the Provinces

Certain Social Services should be included in Concurrent List

240 It is proposed in the White Paper that such subjects as Health Insurance and Invalid and Old Age Pensions should be subjects of Provincial Legislation We see serious objection to this, and consider that they should be included in the Concurrent List

[1] *Supra*, paras 219–221
[2] White Paper, Proposal, 129

While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural it is undesirable to exclude the possibility of All India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should not be burdened with obligations not imposed in another Mr N M Joshi in the Memorandum submitted by him argued that social insurance should also be included in the list of Federal subjects but here again we consider it would be better that it should be in the Concurrent List

Other alterations in the Lists.

241 It would extend this chapter to an unreasonable length if we were to set out in detail all the changes which a revision of the three Lists has involved. We are the less willing to do so because we recognise that the revised Lists themselves will require further expert scrutiny before they are finally submitted to Parliament as part of the legislative proposals of His Majesty s Government. We think however that if the revised Lists are compared with the Lists in the White Paper such changes as have been made in addition to those already mentioned will for the most part be found to speak for themselves

Existing laws.

242. We assume that there will be a provision in the Constitution Act continuing in force (until amended hereafter) the whole body of existing Indian law But it will clearly be necessary before the Act comes into force to redistribute all powers conferred by that law so as to make them conform to the distribution of powers effected by the Constitution Act

THE REVISED LISTS

(The unbracketed figures represent the entries in the Lists set out in the White Paper the figures in brackets represent the order in which the revised entries should be shown)

LIST I (FEDERAL)

Item

1 Omitted for reasons given above

2 (1) His Majesty's naval military and air forces in India and any other armed force raised in India (other than military and armed police maintained by Provincial Governments and armed forces maintained by the Rulers of Indian States) including the employment of those forces for the protection of the Provinces against internal disturbance and for the execution and maintenance of the laws of the Federation and the Provinces.

3 (2) His Majesty s naval military and air force works

Item

4 (3) Local self-government in cantonment areas and the regulation therein of house accommodation

5 Omitted—has been combined with item 2

6 (16) The Benares Hindu University and the Aligarh Muslim University.

7 (17) Ecclesiastical affairs, including European cemeteries

8 (4) External affairs, including international agreements, but with regard to international agreements relating to subjects within the exclusive jurisdiction of a unit, only so far as they have been made with the previous concurrence of that unit

9 (5) Emigration from and immigration into India and inter-provincial migrations, including, in relation thereto regulation of foreigners in India.

10 (6) Pilgrimages beyond India

11 (7) Extradition

11a (8) Fugitive offenders

12 (9) (i) Construction of railways other than minor railways.

(ii) Regulation of federal railways and regulation of other railways in respect of

(a) maximum and minimum rates and fares;

(b) terminals;

(c) safety,

(d) routing and interchangeability of traffic,

(e) responsibility as carriers

(Definitions (to be inserted in the Act). "Railways" includes tramways "Light and feeder railway" means a railway not in physical connection with or of the same gauge as an adjacent railway extending beyond a single unit. "Minor railways" means light and feeder railways wholly within a unit "Federal railways" includes all railways other than minor railways and railways owned by a State and managed by or on behalf of the Ruler of that State.)

13 (10) Air navigation and aircraft, including the regulation of aerodromes

14 (11) Inland waterways passing through two or more units, including shipping and navigation thereon as regards mechanically propelled vessels, but not including water supplies, irrigation, canals, drainage, embankments, water storage or water power

15 (12) Maritime shipping and navigation, including carriage of goods by sea

16 (13) Regulation of fisheries beyond territorial waters

17 Omitted—has been combined with item 14.

Item

18 (14) Lighthouses (including their approaches) beacons light ships and buoys.

19 (15) Port quarantine and marine hospitals

20 (16) Declaration and delimitation of major ports and con stitution and powers of Port Authorities in such posts.

21 (17) Postal telegraphic telephone wireless (including broad casting) and other like services and control of wireless

22 (18) Currency coinage and legal tender

23 (19) Public debt of the Federation

24 (20) Post Office Savings Bank.

25 (21) [Incorporation and regulation of] Corporations for the purposes of the subjects in this list Corporations having objects not confined to one unit Banking Insurance Financial and Trading Corporations not being Co-operative Societies

26 (22) Development of industries in cases where such develop- ment is declared by or under federal law to be expedient in the public interest

27 (23) Cultivation and manufacture of opium sale of opium for export.

28A (24) Possession storage and transport of petroleum.

28B (25) Explosives

29 (26) Arms and ammunition

30 (27) Copyright inventions designs trade marks and mer chandise marks

31 Transferred to List III

32 (29) Cheques bills of exchange promissory notes and other like instruments.

33 Omitted—see Regulation of mechanically propelled vehicles in List III

34 (32) Import and export of commodities across the customs frontiers as defined by the Federal Legislature duties of customs

35 (48) Salt.

36 (49) Duties of excise on the manufacture and production of tobacco and other articles except—

(i) potable alcoholic liquors

(ii) toilet and medicinal preparations containing alcohol Indian hemp opium or other drugs or narcotics

(iii) opium Indian hemp and other drugs and n rcotics.

Item		
37	(50)	Taxes on the capital and the income (other than the agricultural capital and income) of companies.
38	(33)	Geological Survey of India.
39	(34)	Botanical Survey of India.
40	(36)	Meteorology
41A	(37)	Census
41B	(38)	Statistics for the purposes of subjects in this List.
42	(39)	Federal Agencies and Institutes for Research and for professional and technical training or promotion of special studies
43	(40)	The Imperial Library, Indian Museum, Imperial War Museum, Victoria Memorial and any similar institution controlled and financed by the Federal Government
44	(41)	Pensions payable by the Federal Government or out of federal revenues
45	(42)	Federal Services and Federal Public Service Commission.
46	(43)	Lands and buildings in possession of the Federal Government so far as they are not affected by Provincial legislation or are exempted by Federal legislation from the operation of Provincial legislation
47	(44)	Offences against laws on subjects in this List
48		Omitted as unlikely to be required by the terms of the Act
49	(51)	Taxes on other incomes (other than agricultural income), but subject to the power of the Provinces to impose surcharges
50	(52)	Duties in respect of succession to property other than land.
51	(53)	Taxes on mineral rights and on personal capital other than land
52	(54)	Terminal taxes on railway, tramway or air-borne goods and passengers and taxes on railway or tramway fares and freights
53	(30)	Fixation of rates of stamp duty in respect of bills of exchange, bills of lading, cheques, letters of credit, promissory notes, policies of insurance, proxies and receipts
54		Omitted as covered by the substantive provisions proposed with regard to legislation on residual subjects
55	(55)	Naturalisation

Item

56 (56) Conduct of elections to the Federal Legislature, including election offences and disputed elections

57 (31) Standards of weight

58 (57) Chief Commissioners Provinces.

59 (58) Survey of India.

60 (59) Archæology including ancient and historical monuments

61 (35) Zoological Survey

62 Re-drafted and transferred to List III

63 (60) Jurisdiction powers and authority of all Courts except the Federal Court and the Supreme Court with respect to the subjects in this List

64 Omitted.

New items

(*a*) (28) Insurance other than State insurance

(*b*) (61) The extension of the powers and jurisdiction of officers and men of the Provincial Police Forces to areas outside the Province.

(*c*) (45) Imposition of fees taxes cesses and duties in connection with the subjects in this List but not including fees to be paid in Courts

LIST II (PROVINCIAL)

Item

1 (1) Local self-government including matters relating to the constitution and powers of municipal corporations improvement trusts district boards mining settlements and other local authorities in the Province established for the purpose of local self-government and village administration.

2 (2) Hospitals and dispensaries charities and charitable institutions in and for the Province.

3 (3) Public health and sanitation

4 (16) Pilgrimages other than pilgrimages beyond India

5 (5) Education.

6 (6) Public works lands and buildings vested in or in the possession of the Crown for the purposes of the Province.

7 (7) Compulsory acquisition of land.

8 (9) Roads bridges ferries tunnels ropeways causeways and other means of communication not specified in List I

9 (8) Minor railways

10 Included in item 9

Item

11 (11) Water supplies, irrigation and canals, drainage and embankments, water storage and water power

12 (22) Land revenue, including—

(a) assessment and collection of revenue ,

(b) maintenance of land records, survey for revenue purposes and records of rights ,

(c) alienation of land revenue

13 (23) Land tenures, including transfer and devolution of agricultural land , easements

14 (24) Relations of landlords and tenants and collection of rents

15 (25) Courts of Wards and encumbered estates

16 (26) Land improvement and agricultural loans

17 (27) Colonization

18 (28) Pensions payable by the Provincial Government or out of Provincial revenues

19 Included in item 13

20 (29) Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, agricultural education, protection against destructive pests and prevention of plant diseases

21 (30) Veterinary department, veterinary training, improvement of stock and prevention of animal diseases

22 (13) Fisheries

23 (34) Co-operative societies

24 (35) [Incorporation and regulation of] Corporations other than those mentioned in List I

24A (36) Trading, literary, scientific, religious and other societies and associations not being corporations

25 (17) Forests

26 (18) Production, manufacture, possession, transport, purchase and sale of liquors, opium and other drugs and narcotics not covered by item 19 of List III

27 (19) Duties of excise on the manufacture and production of—

(i) potable alcoholic liquors ,

(ii) toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs and narcotics ;

(iii) opium, narcotics, hemp, and other drugs

28 (39) Administration of justice, including the constitution and organisation of all Courts and fees to be paid therein, except the Federal Court and the Supreme Court.

Item		
29	(40)	Procedure in Rent and Revenue Courts.
30	(41)	Jurisdiction powers and authority of all Courts except the Federal Court and the Supreme Court with respect to subjects in this List
31		Transferred to List III
32	(42)	Fixing of rates of stamp duty in respect of instruments other than those mentioned in item 53 of List I
33		Transferred to List III
34	(37)	Registration of births and deaths.
35	(38)	Religious and charitable endowments
36	(43)	Mines and the development of mineral resources in the Province.
37	(44)	Control of the production supply and distribution of commodities.
38	(45)	Development of industries except in so far as they are covered by item No 26 in List I
39		Transferred to List III
40		Transferred to List III
41		Transferred to List III.
42	(46)	Gas
43	(47)	Smoke nuisances.
44	(48)	Adulteration of foodstuffs and other articles
45	(49)	Weights and measures except standards of weight.
46	(50)	Trade and commerce within the Province.
47		Transferred to List III.
48	(12)	Ports except in so far as they are covered by item 20 of List I
49	(10)	Inland waterways being wholly within a Province including shipping and navigation thereon.
50	(52)	Police (including railway and village police)
51	(53)	Betting and gambling except State lotteries.
53	(55)	Protection of wild birds and wild animals.
54	(20)	Vehicles other than mechanically propelled vehicles.
55	(21)	Dramatic performances and cinemas except sanction of cinematograph films for exhibition.
56	(56)	Coroners
57	(57)	Criminal tribes.
58		Transferred to List III

Item		
59	(58)	Prisons, reformatories, Borstal institutions and other institutions of a like nature.
60	(59)	Prisoners
61	(60)	Pounds and the prevention of cattle trespass
62	(61)	Treasure trove.
63	(62)	Libraries, museums and other similar institutions, controlled and financed by the Provincial Government
64	(63)	Conduct of elections to the Provincial Legislature, including election offences and disputed elections
65	(64)	Public Services in the Province and the Provincial Public Service Commission
66	(65)	Surcharges within such limits as may be prescribed by Order in Council on federal rates of income tax and super-tax, to be assessed on the incomes of persons (not companies) resident in the Province
67	(66)	Imposition of fees, taxes, cesses, or duties in connection with the subjects in this List and of taxation in any of the forms specified in the annexure hereto.
68A	(31)	Relief of the poor.
68B	(32)	Unemployment
70	(51)	Money-lenders
71	(4)	Burials and burial grounds other than European cemeteries
72	(67)	Offences against laws on subjects in this List
73		Omitted
74		Omitted
75	(68)	Statistics for the purpose of the subjects in this List
76	(70)	Generally any matter of a merely local or private nature in the Province
77		Omitted.
New items		
(*a*)	(14)	Innkeepers.
(*b*)	(15)	Markets and fairs
(*c*)	(69)	Public debt of the Province.

ANNEXURE

Item		
1 to 5		Omitted—already covered by the entries in List II—*see* item 67
6	(1)	Capitation taxes.
7	(2)	Duties in respect of succession to land

Item

8 (3) Taxes on lands and buildings animals boats hearths and windows sumptuary taxes and taxes on luxuries

9 (4) Taxes on trades professions callings and employments.

10 (5) Taxes on consumption cesses on the entry of goods into a local area taxes on sale of commodities and on turn-over taxes on advertisements.

11 (6) Taxes on agricultural incomes

12 Omitted—*see* item 32 of List II

13 (7) Taxes on entertainments amusements betting and gambling

List III (Concurrent)

1 (1) Jurisdiction powers and authority of all Courts except the Federal Court and the Supreme Court, with respect to the subjects in this List.

2 (2) Civil Procedure including the law of Limitation and all matters now covered by the Code of Civil Procedure.

3 (3) Evidence and oaths

4 (4) Marriage and divorce

5 (5) Age of majority and custody and guardianship of infants

6 (6) Adoption.

7 (7) Registration of deeds and documents

8A (8) The law relating to —

(*a*) Wills intestacy and succession save as regards agricultural land

(*b*) Transfer of property (other than agricultural land)

(*c*) Trusts and trustees.

(*d*) Contracts including partnership

(*e*) Powers of Attorney

(*f*) Carriers.

(*g*) Arbitration.

8B (9) Bankruptcy and insolvency

9 (13) Crimes other than offences against laws on subjects in List I or List II

10 (14) Criminal Procedure including all matters now covered by the Indian Code of Criminal Procedure.

Item

11 (17) Newspapers, books and printing presses.

12 (18) Lunacy and lunatic asylums.

13 (19) Regulation of the working of mines, but not including mineral development

14 (20) Factories

15 (21) Employers' liability and workmen's compensation

16 (22) Trade Unions

17 (23) Welfare of labour, including, in connection therewith, provident funds

18 (24) Industrial and labour disputes

19 (27) Poisons and dangerous drugs

20 (32) The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising outside that Province

21 (31) Legal, medical and other professions.

22 Transferred to List I

23 Omitted

New items

(*a*) (28) The prevention of the extension from one Province to another of infectious and contagious diseases or pests affecting men, animals or plants

(*b*) (12) Administrators-General and official trustees

(*c*) (26) Electricity

(*d*) (25) Boilers

(*e*) (16) European vagrancy

(*f*) (29) The sanctioning of cinematograph films for exhibition.

(*g*) (15) Inter-provincial removal of prisoners with the consent of the Province

(*h*) (30) Mechanically propelled vehicles

(*i*) (33) The recognition of laws, public Acts, records and judicial proceedings

(*j*) (10) Law of non-judicial stamps, but not including the fixation of rates of duty.

(*k*) (11) Actionable wrongs not relating to subjects in List I or List II

(*l*) (34) Imposition of fees, taxes, cesses and duties in connection with the subjects in this List, but not including fees to be paid in Courts

(*m*) (35) Statistics for the purposes of the subjects in this List.

(*n*) (18*a*) Prevention of cruelty to animals

(*o*) (24*a*) Health insurance and invalid and old-age pensions

(2) Federal Finance

Two-fold division of subject.

243 This subject falls naturally into two parts first the allocation of the sources of revenue between the Federation and the Units and second the additional expenditure involved by the proposed constitutional changes. We have had the advantage of a comprehensive and objective review of the facts and figures relating to both parts of the subject by Sir Malcolm Hailey which has been printed among the Records of the Committee We reproduce here from this document the figures of estimated revenue and expenditure of the Central and Provincial Governments for 1933–34 in order that it may be possible to view in proper perspective the various questions dealt with below

Budget Estimates of Revenue and Expenditure of Central and Provincial Governments in 1933–34

Central Revenue	Rs. Crores.	£ millions.
Customs (net)	50 27	37 70
Income taxes (net)	17 21	12 91
Salt (net)	7 60	5 70
Other taxes (net)	0 60	0 45
Net tax revenue	75 68	56 76
Opium (net)	0 63	0 47
Railways (net)	Nil	Nil
Currency and Mint (net)	1 11	0 83
Payments from States	0 74	0 56
Total	78 16	58 62

Central Expenditure	Rs. Crores.	£ millions.
Post and Telegraphs (net)	0 61	0 46
Debt		
Interest (net)	8 97	6 73
Reduction of Debt	6 89	5 17
Civil Administration (net)	8 76	6 57
Pensions (net)	3 02	2 26
Civil Works (net)	1 72	1 29
Defence Services (net)	46 20	34 65
Subvention to N W.F.P	1 00	0 75
Miscellaneous (net)	0 74	0 55
Total	77 91	58 43

Provincial Revenues	Rs. Crores.	£ millions.
Land Revenue	35 29	26 47
Excise	14 85	11 14
Stamps	12 40	9 30
Registration	1 14	0 85
Scheduled Taxes	0 43	0 32
Total tax revenue	64 11	48 08
Forests (net)	0 69	0 52
Irrigation (net)	0 49	0 37
Miscellaneous	11 32	8 49
N W F.P subvention	1 00	0 75
Total	77 61	58 21

Provincial Expenditure	Rs. Crores.	£ millions.
Land Revenue and General Administration	14 86	11 14
Police	12 38	9 28
Jails and Justice	7 66	5 75
Debt	4 21	3 16
Pensions	5 08	3 81
Education	11 80	8 85
Medical and Public Health	5 23	3 93
Agriculture and Industries	2 89	2 17
Civil Works	8 33	6 25
Miscellaneous	7 34	5 51
Total	79 78	59 84

Allocation of Sources of Revenue between the Federation and the Federal Units

The allocation of resources a problem common to all Federations.

244 In any Federation the problem of the allocation of resources is necessarily one of difficulty since two different authorities (the Government of the Federation and the Government of the Unit) each with independent powers are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities

but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system.

The existing system in British India.

245. So far as British India is concerned the problem is not a new one. Though the separation of the resources of the Government of India and the Provincial Governments under the existing Constitution is in legal form merely an act of statutory devolution, which can be varied by the Government of India and Parliament at any time, nevertheless from the practical financial point of view there is already in existence in British India a federal system of finance. This system is fully described in the Report of the Statutory Commission. Determined to avoid the inconveniences which had already been experienced from a system of "doles" from the Centre to the Provinces or from a system of heads of revenue shared between the two parties, the authors of the present Constitution adopted an almost completely rigid separation of the sources of revenue assigned respectively to the Centre and to the Provinces. From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre, except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India, which rests fundamentally upon the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress.

Its results.

246. Both Centre and Provinces have, however, been severely affected by the world economic depression, and the financial position of both has been severely strained. Rates of taxation have had to be increased in all directions, and every department of government has had to submit to retrenchment; but the way in which the strain has been borne is a tribute to the essential soundness of the present financial system. Past experience of the existing system leads to two conclusions on which there is general agreement: (*a*) that there are a few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure; and (*b*) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in

economic conditions This has led to a very strong claim by the Provinces for a substantial share in the taxes on income This claim as might be expected has been pressed most vigorously by the more industrialised Provinces like Bombay and Bengal.

Effect of entry of the States into Federation.

247 The provincial claim to income tax has been given added impetus by the attitude of the States in the matter of direct taxation The entry of the States into the Federation removes indeed one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike but the States have no say under the present system in the fixing of the tariff With the continued rise for many years past in the level of the import duties the States have pressed more and more for the allocation to them of a share in the proceeds of these duties There is of course another side to the picture in the increased cost of the defence services which is for the benefit of the States as well as for British India but nevertheless the question was becoming one of formidable difficulty and was recognised as such in the report of the Indian States Committee of *1928-29* presided over by *Sir Harcourt Butler* With their entry into the Federation the States will take part in the determination of the Indian tariff and their claim to a separate share in the proceeds disappears But if their entry removes this major problem it introduces another though less formidable complication It is obviously desirable that so far as possible all the Federal Units should contribute to the resources of the Federation on a similar basis Broadly speaking no difficulty arises in the sphere of indirect taxation which constitutes some four fifths of the central revenues the difficulty arises over *direct taxation* that is to say taxes on income If the Federation retains the whole of taxes on income as the Centre does at present it would be natural to require that the subjects of the federating States should also pay income tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind.

Plan suggested for allocation of taxes on income.

248 It will be seen therefore from two different lines of approach, that the most difficult question that arises in the problem of allocation is that of the treatment of taxes on income. In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear as new Federal resources were developed The position which would be likely to result from a plan of this kind was examined in India in *1932* by the Federal Finance Committee presided over by one of our own number The Committee declared itself unable to assume the abolition of such provincial contributions within any period that could be foreseen

and this conclusion, and the objections felt to the reintroduction of provincial contributions, experience of which had not been too fortunate under the existing Constitution, led to the abandonment by His Majesty's Government of this scheme

Difficulty of determining equitable basis for division of taxes on income between Federation and Provinces

249 There is little doubt that, from the economic point of view, it is desirable that the Provinces should, if it is practicable, share in the proceeds of taxes on income There has been considerable discussion, since the abandonment of the plan just described, as to the amount of this share If the problem is considered merely as one of striking a theoretically correct balance between the States and British India, on the assumption that the States will not be subject to the federal income tax, there are many factors to be taken into account Some of the federal expenditure will be for British-India purposes only, such as subsidies to deficit British-India Provinces, there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone, and further, part of the proceeds of taxes on income is derived from subjects of Indian States, e g, holders of Indian Government securities and shareholders in British-India companies The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income tax could equitably be retained by the Federation It will be wiser to base the division upon the financial and economic needs of the Federation and the Units Nor is it likely that any disequilibrium between British India and the States that might result from such a method of treatment would be of a serious character The difficulty is rather that the Federal Centre is unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas to which we refer below But it is equally undesirable to leave the Provinces with no indication of the share which they may ultimately expect when the strain of present economic difficulties becomes less severe It is also necessary that any transfer should be gradual, if dislocation of both federal and provincial budgets is to be avoided

The White Paper proposal

250 The solution of this problem proposed in the White Paper may be briefly described as follows[1] Taxes on income derived from federal sources, *i e*, federal areas or emoluments of federal officers, will be permanently assigned to the Federation Of the yield of the rest of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces This percentage is to be not less than 50 per cent nor more than 75 per cent Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain

[1] White Paper, Proposals 139, 141

constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions if circumstances made it necessary to do so The Federal Government and Legislature would, in addition be empowered to impose a surcharge on taxes on income the proceeds of which would be devoted solely to federal purposes We understand it to be implicit in this proposal that the power should only be exercisable in times of serious financial stress and when such surcharges are in operation the States would make contributions to the federal fisc, assessed on a predetermined basis, so as to make them a fair counterpart of the yield of the surcharges from British India The conditions under which the States are ready to accept this proposal were explained in a statement made to us on behalf of the Indian States Delegates[1] and we agree that conditions of the kind mentioned are not unreasonable

Criticisms of the proposal.

251 Some obvious criticisms can be made on this plan for dealing with the taxes on income. If a specified percentage of the yield of taxes on income is to be assigned to the Provinces any alteration in the rate of tax will affect both parties (Federation and Provinces) though there may be only one which desires either an increase or a diminution in the yield. It may be suggested that the yield of a given basic rate should be assigned either to the Federation or the Provinces the remainder going to the other We are, however informed that a plan of this kind would not fit well into the Indian income tax system which differs considerably from the British. It is also said that the anomaly is more apparent than real since at least for many years to come both Federation and Provinces will need as much money as can be obtained from taxes on income, and the fixing of the rate is likely to depend more on taxable capacity than on the precise budgetary position at any given moment of either

Modifications suggested.

252 We agree that the *percentage which is ultimately to be* attained should be fixed as late as possible by Order in Council but we see little or no prospect of the possibility of fixing a higher percentage than 50 per cent. and there is an obvious difficulty in prescribing in advance, as the White Paper does a time-table for the process of transfer even though power is reserved to the Governor-General to suspend the process (or as we assume its initiation) The facts discussed below indicate that for some time to come the Centre is unlikely to be able to do much more than find the funds necessary for the deficit Provinces and that an early distribution of any substantial part of the taxes on income is improbable. We think that it would be preferable to leave the actual periods indicated above, which the White Paper proposes should be 3 and 7 years to be determined by Order in Council in the light of circumstances at the time rather than to fix them by Statute (the Governor-General s power to suspend being of course retained)

[1] Minutes of Evidence, Q.8023.

Suggestion of British India Delegation

253. The Joint Memorandum of the British-India Delegation recognises the difficulty of predetermining the various factors in this problem, and recommends an enquiry after three years The Delegation do not state by what authority they consider that any decision consequent upon it should be taken, but perhaps intend that the decision should rest with the Federal Government. This does not seem fair to the Provinces.

Objections of Bengal and Bombay

254 A further objection has been taken by some witnesses that it is not fair to Provinces such as Bengal and Bombay that the transfer of the provincial share of taxes on income should be delayed, and that, so long as the Federation cannot spare the money, there should be some equitable form of contribution to the Federation from all the Provinces alike But any plan of this kind must inevitably lead in effect to a return to a system of provincial contributions which has been explored and abandoned We do not recommend such a course

Scheme of White Paper generally recommended

255 It must be admitted that the White Paper proposals for dealing with taxes on income present many difficulties, but the problem does not admit of any facile solution, and, except for the suggestion made above, we do not ourselves feel able to propose an improved scheme We should add that the actual method of distribution between the Provinces of any share in the taxes on income is a technical problem of some complexity, and we do not think that it is part of our duty to suggest a detailed scheme The report of the Federal Finance Committee suggests a useful line of approach, on the assumption that an automatic basis of distribution can be fixed The validity of this assumption will largely depend upon the amount of income tax which can be allocated to the Provinces at any given time

Corporation Tax

256 There are two further questions connected with taxes on income on which some comment is desirable The White Paper proposes to treat specially the taxes on the income or capital of companies [1] We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a supertax on the profits of companies It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution We appreciate the desire of the States for this measure of elasticity and feel bound to accept it, though we must observe that the details of the arrangement with the States seem likely to be complex and that the adoption of the alternative procedure is economically undesirable.

[1] White Paper, Proposal 142

Provincial surcharges.

257 The White Paper also proposes that a Provincial Legislature should be empowered to impose a surcharge not exceeding 12½ per cent on the taxes levied on the personal income of persons resident in the Province and to retain the proceeds for its own purposes [1] There is we understand a considerable difference of opinion in India on this suggestion It might lead to differential rates of tax on the inhabitants of different Provinces and although a limit would be set to the possible differences this is in itself undesirable The rates of taxes on income are likely also to be sufficiently high to make it difficult to increase the rate by way of surcharge and to give the Provinces such a power might well nullify the emergency power of imposing a surcharge which we think it essential that the Federation should possess. On the other hand the proposal would undoubtedly give an elasticity to provincial revenues which would be very desirable until the transfer of their share of the income tax is completed But after balancing the considerations on either side we are on the whole not in favour of it

Taxes on agricultural incomes.

258 The White Paper proposes that the Provinces should have exclusive power to impose taxes on agricultural incomes which are not at present subject to income tax. We approve this proposal.

The deficit Provinces.

259 We come now to the question of deficit Provinces. Th problem of Sind differs from that of the others since it is not expected that this Province will permanently remain a deficit area. Other Provinces notably Orissa and Assam are so far as can be foreseen areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of resources present or proposed and in these cases it is intended that there shall be a fixed subvention from the federal revenues [2] Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount we understand that the intention is so far as possible to make it a permanent and stable contribution and thus to avoid the danger that the Province instead of developing its resources may be tempted to rely on expectations of extended federal assistance, and we agree. It is proposed that the Provinces to be assisted and the amounts of the subvention should be determined after further expert enquiry at as late a date as possible. The case of the North West Frontier Province stands on a different footing This Province is at present in receipt of a contribution of a crore of rupees (75)[3] annually from the Centre the need for which arises mainly from special expenditure in the Province due to strategic considerations though not strictly to be classified as defence expenditure. In this case it

[1] White Paper Intro. para. 57 Appendix VI List II (66)

[2] White Paper Proposal 144

[3] The figure in brackets here and elsewhere in this section denotes the equivalent figure in millions sterling at 1s 6d the rupee

between Federation and Units in matters of this kind the White Paper proposes that Federal legislation upon them should require the *prior assent of the Governor-General* to be given *only after consultation* with both the Federal Ministry and the Governments of the Units.[1] We are doubtful whether a statutory obligation to consult the Units may not give rise to difficulties and we see some advantage in directing the Governor General in his Instrument of Instructions to ascertain the views of the Units by the method which appears to him best suited to the circumstances of the particular case. On the other hand a suggestion has been made for an entirely different solution of the problem and that all central receipts which are to go in aid of provincial revenues should be paid into a *special* Provincial Fund to be administered for the benefit of the Provinces by the Governor General on the advice of a statutory Inter-Provincial Council representing the Provincial Governments We have already given our reasons for thinking that it is undesirable to include in the Constitution Act statutory provisions in regard to an Inter Provincial Council. Clearly if it should prove impossible at any *rate in the early years of the Federation to devise an automatic* basis for the distribution of income tax to the Provinces some form of consultation between the Governor-General and the Provincial Governments as to the methods of distribution will have to be devised but in that event the point can if necessary be met by the Order in Council procedure which we have already suggested

Financial adjustments between the Federation and the States.

263 The entry of the States into Federation apart from the major questions referred to above involves some complicated financial adjustments mainly in respect of tributes and ceded territories but these though of importance to individual States do not fundamentally affect the Federal finance scheme as a whole They have been exhaustively examined in the Report of the Indian States Enquiry Committee 1932 [2] which was also presided over by one of our members We do not think it necessary to review the intricate adjustments there discussed and it is sufficient to say that we endorse the main principles on which the Report is based and in particular the gradual abolition over a period of years (corresponding to the period during which it is proposed to defer the full assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys.

Land customs duties imposed by Indian States.

264 It will be convenient to refer here to the power which the States already possess to impose customs duties on their land frontiers. It is greatly to be desired that States adhering to the Federation should, like the Provinces accept the principle of internal freedom for trade in India and that the Federal Government alone

[1] White Paper Proposal 140

[2] Cmd. 4103

should have the power to impose tariffs and other restrictions on trade Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs In some of the larger States the right to impose them is specifically limited by treaty We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation, and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion[1] would have to be brought to bear upon the States

States' maritime customs

265 Of the problems discussed in the Indian States Enquiry Committee's Report, the most difficult and serious is that of the maritime States in relation to sea customs. The present position, which varies between one State and another, is fully explained in the Report, and we understand that at the moment questions of importance are at issue between the Government of India and some of these States on this subject We think it most desirable that these difficulties should have been resolved before the Federation comes into being The general principle which we should like to see applied in the case of the maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State, but we recognise that treaty rights may not make it possible in all cases to attain this ideal But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system It is unnecessary to emphasize the importance of securing that there is a genuine uniformity in the rates of customs duties levied respectively at State ports and at the ports of British India

[1] White Paper, Proposal 129

Borrowing powers.

266 Before leaving this part of the subject of federal finance reference should be made to the arrangements proposed for the regulation and co-ordination of federal and provincial borrowing [1] The proposals in the White Paper on the subject seem to us acceptable subject to one additional provision A Provincial Government will be empowered to borrow directly from the Federal Government or itself to raise a loan though the latter will require the sanction of the Federal Government if the Province is already in debt to the Centre We think that this is right but it puts great power in the hands of the Federal Ministry who might by refusing the application of a Province or by insisting upon unreasonable conditions assume the right of controlling the general policy of a Province in a manner which we do not think was contemplated. In these circumstances it seems to us that the ultimate decision whether consent has been unreasonably withheld in any instance should rest with the Governor-General in his discretion.

The additional expenditure involved by the proposed constitutional changes

Additional cost of Federation.

267 We have been furnished with an estimate of the new overhead charges which would result from the adoption of the Constitution proposed in the White Paper that is to say the additional expenditure required by reason (*inter alia*) of an increase in the size of the Legislatures and electorates or the establishment of the Federal Court. These would amount to ¾ crore (56) per annum attributable to the establishment of Provincial Autonomy and another ¾ crore (56) per annum attributable to the establishment of the Federation. We understand that these would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes The amount under present financial conditions is by no means negligible but is not of very serious dimensions. There are, however apart from the new overhead charges certain other factors affecting the financial position which it is necessary to pass in review The most important of these is the separation of Burma and although this will not in itself involve a financial loss to the taxpayers of India and of Burma considered as a whole the revenues of India will suffer a loss estimated to be possibly as much as 3 crores (2 2) per annum less the yield of any revenue duties on imports from Burma which may be introduced from the date of separation.

Subventions to deficit Provinces Sind

268 The next most considerable adjustment is that due to the separation of Sind. It is estimated that there will be an initial deficit in Sind of about ¾ crore (56) per annum but that this will gradually diminish and be ultimately extinguished over a period of some fifteen years by the end of which time it is believed that the agricultural developments connected with the Sukkur Barrage scheme

[1] White Paper Proposals 148 149

will be complete If Sind were not constituted a separate Province this deficit would fall to be met from Bombay revenues, except for a small sum of about 10 lakhs (·07), the estimated cost of new overhead charges (this sum is included in the total estimate of new overhead charges mentioned above) It is proposed that a subvention should be given from federal revenues to Sind, of a prescribed but gradually diminishing amount Here again, except for the 10 lakhs already mentioned, there is no additional burden imposed upon the taxpayers of India as a whole, but the relief given to Bombay, which is by no means unneeded, will impose some additional strain on federal revenues

Orissa.

269 Similar considerations arise in the case of Orissa This will undoubtedly be a deficit area and will require a subvention of something like 30 lakhs (·22) per annum, but of this only about 15 lakhs (·11) per annum, which is the estimate for new overhead charges, involves any additional burden on federal revenues and has already been included in the total figure for new overhead charges referred to above The balance would in effect have had to be provided by subvention from the Centre even if a new Province of Orissa were not constituted The existing Province of Bihar and Orissa is faced with serious financial difficulties, aggravated by the recent earthquake, and the separation of Orissa only means that the new Province will receive the subvention which would otherwise have come to it indirectly through the Government of Bihar and Orissa It will be an advantage to the Government of Bihar to be free of the administration of a deficit area which is distinct from the rest of the Province, with which communication is difficult, and whose problems are different from those which confront Bihar

Other deficit Provinces

270 The subventions to other deficit Provinces also react on federal finance, but these would have been necessary before long under the existing Constitution, since it is clearly impossible to allow the continued accumulation of deficits by a Province, if over a number of years it is beyond its power within the resources assigned to it to balance its expenditure and revenue The subvention to the North-West Frontier Province has already been granted, and the claim of Assam to an increase in its revenues has for some time been recognised as one which the Central Government must meet in some form

Cost of adjustments with the States

271 The factors above mentioned come into play on the inauguration of Provincial Autonomy. The only fresh factor, apart from the new overhead charges of ¾ crore (·56) per annum, which is introduced by Federation itself is the proposed financial adjustment with the States to which we have already referred and which it is suggested shall be extended over a period of years This will ultimately involve a net loss to federal revenues of something less than 1 crore (·75) per annum

General conclusions.

272. The general conclusion therefore is that though no formidable new financial burden would be thrown on the taxpayers of India as a whole as a direct result of the constitutional change proposed the necessity for giving greater elasticity to provincial resources the subventions to the deficit Provinces and also the separation of Burma will impose a further strain on the finances at the Centre. India is still suffering from the effects of the general financial depression and the low level of agricultural prices has been and still is a very formidable problem. But the state of Indian finance reflects great credit on those responsible for its administration and the storm is being weathered more successfully than in most other countries Economic recovery would no doubt as in the past produce speedily a very marked improvement in the situation but at the moment special emergency taxation and special economies are still in force and little more can be done than make both ends meet, though a beginning has been made in the present year towards easing provincial difficulties by a central grant to the jute-producing Provinces

The financial situation in relation to constitutional changes

273 It has been argued in some quarters that constitutional change should be postponed until the financial horizon is clearer but the additional difficulties attributable to the change (and such as they are they relat mainly to Provincial Autonomy and not to Federation) are but a small part of a financial problem which has in any event to be faced and is we hope and believe in process of solution No doubt before the new Constitution actually comes into operation His Majesty's Government will review the financial position and inform Parliament how the matter stands. It is suggested in the White Paper that at the last possible date there should be a financial enquiry [1] This seems to us a suitable procedure but we do not conceive nor do we understand that it is intended that any expert *body could be charged with the duty of deciding whether the position* was such that the new Constitution could be inaugurated without thereby aggravating the financial difficulties to a dangerous extent. On this point, as we have said Parliament must at the appropriate time receive a direct assurance from His Majesty s Government.

[1] White Paper Introd. para 60

(3) The Indian Public Services

The Public Services under responsible government

274. The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministries advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide The grant of responsible government to a British Possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new , but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution , but, since in India the whole machinery of government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt It is not because he expects his house to be burned down that a prudent man insures against fire He adopts an ordinary business precaution, and his action in doing so is not to be construed as a reflection either upon his neighbours' integrity or his own

The British element in the Services

275 The United Kingdom no less than India owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full But the question has another and scarcely less important aspect , for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and hold the best type of man, whether British or Indian Parliament may, therefore, rightly require, in the interests of India as well as of this country, not only that the Services are given all reasonable security, but that none is deterred from entering them by apprehensions as to his future prospects and career It is, indeed, the interests of India that must be considered above all The difficulties of the new Constitution will be aggravated in every respect if the administrative machinery is not thoroughly sound One of the strongest supports of the new Governments and their new Ministers that we can recommend, and that the Constitution can provide for, will be impartial, efficient and upright Services in every grade and department It has been

impressed on us from various responsible sources mainly Indian that the success of the transfer of local self governing bodies to non-official hands has been jeopardized by the lack of the strong and adequate staff both inspecting and administrative required by the new heads of such bodies when they took over their duties from experienced officials Whether or not these criticisms are justified they indicate the obvious danger in the larger sphere of provincial government which would follow from any deterioration in the Services.

Present Organisation and Recruitment

The Indian Civil Services. 276 The Civil Services in India are classified in three main divisions (1) the All India Services (2) the Provincial Services and (3) the Central Services The All India Services though they work no less than the Provincial Services under the Provincial Governments are all appointed by the Secretary of State and he is the final authority for the maintenance of their rights. Each All India Service is a single Service and its members are liable to serve anywhere in India but unless transferred to service under the Central Government the whole of their career lies ordinarily in the Province to which they are assigned on their first appointment.

The All India Services. 277 The All India Services consist of the Indian Civil Service the Police the Forest Service the Service of Engineers the Medical Service (Civil) the Educational Service the Agricultural Service and the Veterinary Service. Recruitment however by the Secretary of State to the Buildings and Roads Branch of the Service of Engineers to the Educational Service the Agricultural Service and the Veterinary Service ceased in 1924 on the recommendation of the Lee Commission The composition and total strength of these Services on 1st January 1933 were as follows —

1	2. *Europeans*	3 *Indians*	4 *Total*
Civil Service	819	478	1,297
Police	505	152	665[1]
Forest Service	203	96	299
Service of Engineers	304	292	596
Medical Service (Civil)	200	98	298
Educational Service	96	79	175
Agricultural Service	46	30	76
Veterinary Service	20	2	22
	2 193	1,227	3 428

The Provincial Services. 278 The Provincial Services (in the sense in which the expression is ordinarily used which excludes not only the members of All India Services working in the Province but also the numerous Subordinate

[1] Including 8 officers who had not been classified in either category

Services) are, and always have been, almost entirely Indian in composition, and cover the whole field of provincial civil administration in the middle grades Appointments to these Services are made by the Provincial Governments who, broadly speaking, control their conditions of service, and show an increasing tendency to restrict their recruitment to candidates from the Province. In many branches of the administration members of All-India and Provincial Services work side by side, though the higher posts are usually filled by the former.

The Central Services

279 The Central Services are concerned with matters under the direct control of the Central Government. Apart from the Central Secretariat, the more important of these Services are the Railway Services, the Indian Posts and Telegraph Service, and the Imperial Customs Service To some of these the Secretary of State makes appointments, but in the great majority of cases their members are appointed and controlled by the Government of India, and, if these Services are taken as a whole, Indians out-number Europeans even in the higher grades, while, with the exception of the railways, the middle and lower grades may be said to be wholly Indian The Anglo-Indian community has always furnished a large number of recruits to the Central Services, especially the Railways, the Posts and Telegraphs, and the Imperial Customs Service

Rights of present members of the Public Services

Rights of present members of the Services

280 In considering the rights and safeguards proposed in the White Paper for personnel already in the Services at the date when the Constitution Act comes into force, it will be convenient first of all to take the rights and safeguards applicable to all personnel, secondly, those applicable to officers appointed by the Secretary of State; and thirdly, those applicable to officers appointed by other authorities

Rights and Safeguards applicable to all personnel the special responsibility of the Governor-General and Governors

281. It will be recalled that a special responsibility is imposed on the Governor-General and on each of the Provincial Governors for "the securing to members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests" Some of the British-India Delegates objected to a special responsibility expressed in such wide terms, and hold that it should extend only to the rights given by the Constitution Act itself It has been explained to us that the purpose of the wider definition is to secure to the Services equitable and reasonable treatment in essential matters not covered specifically by statute For example, it has long been the settled policy of Government that suitable medical attendance should be available to members of the Services and their families, though there is nothing to that effect in the existing Act or in the rules made under it We agree that, in the circumstances, something more than "rights"

is required and we must leave it to the draftsman to decide whether legitimate interests is sufficient to cover the whole field which we think ought to be covered

Dismissal and reduction.

282 Protection against dismissal by any authority subordinate to the authority by whom he was appointed is secured to every member of the Public Service by the present Government of India Act and a statutory rule provides that he shall not be dismissed or reduced without being given formal notice of any charge made against him and an opportunity of defending himself Provisions on the same lines should obviously find a place in the new Constitution [1]

Indemnity for past acts.

283 The White Paper proposes that there shall be a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of duty [2] In view of threats which have been made in certain quarters especially against the Police we think that it is justifiable to give this measure of protection to men who have done no more than their duty in very difficult and trying circumstances. But we think that the certificate by the Governor General or Governor as the case may be ought to be made conclusive on the question of good faith

284 In addition the White Paper proposes that there should be secured to every person in the Public Services at the commencement of the Constitution Act all service rights possessed by him at that date [3] The principal existing service rights of officers appointed by the Secretary of State and of persons appointed by authority other than the Secretary of State are set out in Parts 1 and 2 respectively of Appendix VII of the White Paper

...al right to compensation for loss of any existing right.

285 In addition to these rights and safeguards common to all members of the Public Services officers appointed by the Secretary of State are also to have a special right to such compensation for the loss of any existing right as the Secretary of State may consider just and equitable It may be observed that some of the existing service rights of officers appointed by the Secretary of State set out in Part 1 of Appendix VII are conferred by the present Government of India Act and could only be modified or abolished by an amending Act others are embodied in statutory rules made by the Secretary of State in Council. As things stand at present the latter could no doubt be taken away or modified at any time by the same authority but the whole body of service rights from whatever source derived may properly be regarded as forming a single code which the members of the All India Services now serving may equitably claim should not be varied (at least without

[1] White Paper Proposal 181
[2] White Paper Proposal 180
[3] White Paper Proposals 182 and 191

a right of compensation) to their disadvantage; and we concur with the White Paper proposal, which we are glad to observe had the approval of the Services Sub-Committee of the First Round Table Conference

Rights to equitable compensation

286 Further, in addition to the provision for compensation for the loss of service rights, it is proposed that the Secretary of State should be empowered to award compensation to any officer appointed by him in any other case in which he considers it to be just and equitable that compensation should be awarded [1] This is no doubt a very wide and general power, but it is impossible to foresee and provide in a statute against all the contingencies that may arise in the administration of a great Service and we do not, therefore, dissent from the proposal The Secretary of State assisted by his Advisers[2] may be trusted to preserve a reasonable balance between the interests of the Services on the one hand and those of Indian revenues on the other

Further safeguards not necessary

287 We have examined with particular care in this connection the suggestions made to us both orally and in writing by the various Service Associations, but have come to the conclusion that no further special measures of protection are required for members of the Secretary of State's Services We see no advantage, for example, in the insertion of a special provision requiring the concurrence of the Governor to the personnel of the Committees of Enquiry into the conduct of officers Nor do we consider that a case has been made out for resuming to the Secretary of State the detailed regulation for his own Services of travelling and compensatory allowances, which are, and have long been, regulated by the authorities in India In the discharge of his special responsibility for securing the legitimate interests of the Services as a whole, the Governor would be bound to satisfy himself that a Committee of Enquiry into an officer's conduct was so constituted as to ensure a fair hearing, and similarly that travelling allowances are on an adequate scale

Summary of more important conditions of service

288 We may point out that among the conditions of service which will be secured to all serving officers appointed by the Secretary of State, if our recommendations are accepted, are the following —

(1) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service,

(2) a right to the concurrence of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure,

[1] White Paper, Proposal 182
[2] *Infra*, para 386

(3) a right of appeal to the Secretary of State against orders passed by an authority in India—

(*a*) of censure or punishment

(*b*) affecting disadvantageously his conditions of service, and

(*c*) terminating his employment before the age of superannuation

(4) regulation of his conditions of service (including the posts to be held) by the Secretary of State who will be assisted in his task by a body of Advisers of whom at least one-half will have held office for at least ten years under the Crown in India

(5) the exemption of all sums payable to him or to his dependants from the vote of either Chamber of the Legislatures.

For *contingencies not susceptible of statutory definition* the special responsibility of the Governor-General and Governors and the control which the Secretary of State and his Advisers will exercise over the conditions of service of officers appointed by the Secretary of State will in our opinion afford a sufficient and indeed the only possible protection There is a point in every system of administration where some authority must have discretion to deal with such contingencies and must be left to deal with them in an equitable manner

Conditions of service of officers appointed by the Secretary of State

289 It is proposed that after the commencement of the Act the Secretary of State, who will continue[1] to make appointments to the Indian Civil Service the Indian Police and the Ecclesiastical Department shall regulate the conditions of service of all persons so appointed and it is intended that the conditions of service thus laid down shall in substance be the same as at present The power to regulate the conditions of service of officers not appointed by the Secretary of State on the other hand has since 1926 been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services and the White Paper contains no provision as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act

Status of the Public Services

290 While we consider that the White Paper provides adequately for the special protection of members of the Secretary of State s Services we are not fully satisfied that the status of other members of the Public Services and of those Services as a whole has been made sufficiently clear either in the White Paper or in any of the investigations and discussions which have led up to its preparation. We have already discussed[2] the measures necessary to safeguard the morale and efficiency of the Police Service including its subordinate ranks We shall make later[3] certain special proposals in regard to judicial appointments In addition however to these special recommendations we think it our duty to make certain general observations on the future of the Public Services as a whole.

[1] *Infra* paras 296 ff.

[2] *Supra* paras. 92–96.

All-India, Central, a Provincia Services a all Crown Services

291 It is natural that the process by which during recent years Provincial Service officers have been gradually substituted for All-India officers in the transferred departments and greater powers of control have been delegated to the Provincial Governments should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services The tendency has almost inevitably been to regard the Provincial Services as having ceased to be Crown Services, and as having become Services of the Provincial Governments This tendency has been emphasised by the argument, frequently advanced and accepted in the past both by Indians and Englishmen, that provincial self-government necessarily entails control by the Provincial Government over the appointment of its servants This argument has, no doubt, great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely, that civil servants are the servants of the Crown, and that the Legislature should have no control over their appointment or promotion and only a very general control over their conditions of service Indeed, even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister as, so to speak, the personal adviser of the Crown in regard to all service matters The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India Services But, whatever misunderstandings may have arisen in the past as to the real status of the Provincial Services, there ought to be no doubt as to their status under the new Constitution We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation from the Crown, *i e*, directly from the same source as that from which the Secretary of State derives his powers of recruitment The Provincial Services, no less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services, and the efficiency and morale of those Services will largely depend in the future on the development in India of the same conventions as have grown up in England

Governor-General ai Governors should be, under the Crown, recognised as heads c Central an Provincial Services respectivel

292 But, if such conventions are to develop in India as in England, they must develop from the same starting-point, from a recognition that the Governor, as the personal representative of the Crown and the head of the Executive Government, has a special relation to all the Crown Services He will, indeed, be generally bound to act in that relation on the advice of his Ministers, subject to his special responsibility for the rights and legitimate interests of the Services, but his Ministers will be no less bound to remember that advice on matters affecting the organisation of the permanent

executive services is a very different thing from advice on matters of legislative policy and that the difference may well affect both the circumstances and the form in which such advice is tendered We think therefore that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as under the Crown the heads of the Central (as distinct from the All India) and Provincial Services Appointments to these Services would accordingly run in the name of the Governor General and Governor respectively and it would therefore follow[1] that no public servant appointed by the Governor-General or Governor will be subject to dismissal save by order of the Governor General or Governor

Status and rights of Central and Provincial Services not to be inferior to those All-India Services.

293 But further than this it will in our view be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services The special responsibility of the Governor General and Governors would of course in any case extend to securing the legitimate interests as well as the rights of members of these Services but it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give these Services the necessary security The principal existing rights of members of these Services are set out in List II of Appendix VII of the White Paper We think that the Legislatures in passing Provincial Civil Service Acts authorising and requiring the Executive Government to give these Services the necessary security would be well advised to consider whether to meet the new conditions List II of Appendix VII of the White Paper should be enlarged by appropriate additions from List I of the same Appendix wherein are set out the principal existing rights of officers appointed by the Secretary of State. In our view the status and rights of the Central and Provincial Services should not be in substance inferior to the status and rights of persons appointed by the Secretary of State in regard to the two main points covered by List I These two points are firstly protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion and secondly protection against such arbitrary alterations in the organisation of the Services themselves as might damage the professional prospects of their members generally On the first point these Provincial Civil Service Acts could not indeed determine in detail the rates of pay allowances and pensions and the conditions of retirement of all civil servants nor the procedure to be followed in considering their promotion on the one hand or on the other their dismissal removal reduction or formal censure Such Acts could however confer general powers and duties for these purposes on the Government and in regard to promotions they could provide

[1] *Supra* para. 282.

definitely that canvassing for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organisation, yet the morale of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance A Legislature does nothing derogatory to its own rights and powers if it confers by law upon the Executive the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance

Votability of salaries, etc, of Central and Provincial Services

294 There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions There is, indeed, again nothing derogatory to the rights and powers of the Legislature in the adoption of a special procedure, similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute instead of being voted annually on estimates of supply, and this is in fact generally recognised to be a desirable procedure in certain circumstances But, as we point out below,[1] in a slightly different connection, this procedure could not in practice be applied to the salaries of all public servants We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, and in particular to the higher grades of all the Services We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all

Defence Services

295 Although this chapter is mainly concerned with the Civil Services, we think it right to mention the position of members of the Defence Services as a whole, including not only the officers, non-commissioned officers and men of the Defence Forces in India, but also the corresponding grades of civil officials whose work lies within the sphere of Defence and who are paid from Defence estimates They are clearly entitled to the same kind of rights and protection as they now enjoy as regards their service conditions, although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected Nevertheless, their rights should not be left in doubt Their pay and pensions would be

[1] *Infra*, para. 316

included under the head of expenditure required for the reserved Department of Defence and as such would not be submitted to the vote of the Legislature There should be no room for misunder standing on this point.

Future Recruitment to the Public Services

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296 We have found the problem of the future recruitment of the two principal administrative services in India the Indian Civil Service and the Indian Police among the most difficult of those with which we have had to deal The appointing authority must necessarily control the main conditions of service and if control remains with the Secretary of State there will to that extent be a derogation from the powers over the officers who are working under it which an autonomous Provincial Government might expect that the Crown should delegate to it Such a derogation is inevitable in the case of officers recruited by the Secretary of State before the establishment of the new Constitution but it was urged before us and has been again emphasised by the British India Delegation in their Joint Memorandum that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy and that the All India Services ought henceforth to be organised on a provincial basis and recruited and controlled exclusively by the Provincial Governments

Continuance of recruitment by Secretary of State recommended.

297 We appreciate the force of this line of argument though we have already pointed out the dangerous conclusions which might be drawn from it But the loyalty with which officers of the All India Services have served the Local Governments under whom they work notwithstanding that these Services are under the control of the Government of India and the Secretary of State has a long tradition behind it nor has any Local Government felt difficulty in regard to maintaining discipline and securing full obedience of the Services on account of that control. Moreover the evidence given before us confirmed the earlier conclusions of the Lee Commission and of the Statutory Commission that with negligible exceptions the officers of these Services have maintained excellent relations with the Indian Ministers under whom they have been working Subject to certain qualifications to which we refer hereafter we are of opinion that recruitment by the Secretary of State for the All India Services where it still continues should come to an end except in the case of the Indian Civil Service and the Indian Police the functions performed by members of these two Services are so essential to the general administration of the country and the need therefore for maintaining a supply of recruits European and Indian of the highest quality is so vital to the stability of the new Constitution itself that we could not view without grave apprehension an abrupt change in the system of recruitment for these two Services simultaneously with the introduction of fundamental changes in the system of

government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre. All the information which we have had satisfies us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion, as proposed in the White Paper,[1] that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his discretion. The change in that case might be no doubt represented as one of form rather than of substance, since the Governor-General would be acting under the directions of the Secretary of State; but for that very reason we are reluctant to make a merely formal change which might at this juncture have an unfortunate effect upon potential recruits. We believe, however, that there is much to be said for the recruitment in India of the prescribed proportions of Indians for the Indian Civil Service as well as for the Indian Police, and recommend this as a subject for consideration by His Majesty's Government.

Position should be reviewed in light of experience.

298. We recognise that the recommendation which we have felt it our duty to make is one which may not be welcome in some circles of Indian opinion. We desire therefore to make it clear that it is not intended to be a permanent and final solution of this difficult question. Our aim, as we have already said, is to ensure that the new constitutional machinery shall not be exposed during a critical period to the risks implicit in a change of system. We observe in the White Paper a proposal that at the expiration of five years from the commencement of the Constitution Act an enquiry should be held into the question of future recruitment for these two Services, the decision on the results of the enquiry (with which it is intended that the Governments in India shall be associated) resting with His Majesty's Government, subject to the approval of both Houses of Parliament.[2] We endorse the principle that the whole matter should be the subject of a further enquiry at a later date; but past experience leads us to doubt the wisdom of fixing a definite and unalterable date for the holding of an enquiry of this kind. We agree that no useful purpose would be served by an enquiry before the expiration of five years; but we think it must be left to the Government of the day, in the light of the then existing circumstances, to determine whether after

[1] White Paper, Proposal 183.
[2] White Paper, Proposal 189.

that period the time has arrived for such an enquiry It may be said that this is to postpone the final determination of the question to an indefinite future but this is by no means our intention We hope that the situation will have become so far clarified in five years time from the date when the new Provincial Governments first take office that an enquiry may then be found of advantage though it is unlikely that a revision of the question of recruitment by the Secretary of State of officers employed under the Federal Government will be appropriate until a later date. Where so much is difficult and perplexing it would be wrong to tie in advance the hands of those on whom the responsibility will rest for coming to a decision. Nor must it be assumed that such an enquiry will be merely a formal prelude to a change of system It will furnish the information on which an ultimate decision can be based but we do not desire to anticipate or prejudice the final conclusion. It seems to us that the enquiry would be most conveniently made by a small body of administrative experts The Constitution Act should in our view make provision for enabling the present arrangements to recruitment and control of the Indian Civil Service and Indian Police to be varied without an amending Act probably procedure by Order in Council the draft of which had been approved by both Houses of Parliament would be most convenient

The Indian Medical Service (Civil)

299 Under existing arrangements there is no direct recruitment for the Indian Medical Service (Civil) Vacancies are filled from among officers appointed to the Indian Medical Service who have had a period of military duty We note the view expressed in the Report of the Services Sub-Committee of the first Round Table Conference that there should in future be no Civil Branch of the Indian Medical Service and that the Civil Medical Service should be recruited through the Public Services Commissions The Sub-Committee however added that the Governments and Public Services Commissions in India should bear in mind the requirements of the Army and of British officials in India and should take steps to recruit an adequate number of European doctors to their respective Medical Services and to offer such salaries as would attract a good type of recruit. We are however convinced on the information supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services and that it will be necessary for the Secretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control of Ministers) to require the Provinces to employ a specified number of Indian Medical Service officers In making these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil Services have an overriding claim

The Superior Railway Services

300 The present position is that recruitment of European personnel to the Superior Railway Services is divided between the Secretary of State in Council and the High Commissioner for India The former makes all first appointments of persons of non-Asiatic domicile to the Indian Railway Service of Engineers, Transportation (Traffic) and Commercial Departments and Transportation (Power) and Mechanical Engineering Departments, and the latter various specialist appointments such as Bridge, Signal and Electrical Engineers, Works Managers and Medical Officers; and also Engineers to fill temporary posts

Future recruitment

301 Under the ratios recommended by the Lee Commission in 1924, 25 per cent only of the total direct appointments to the Superior Railway Services is British, but the full effect of the corresponding ratio of Indian appointments will not be apparent for some years, as the great majority of the higher posts will continue to be filled by officers appointed to the Service before 1924 We recommend that the existing ratio of British recruitment should be continued for the present and should include a due proportion of Royal Engineer officers We think however that the new Railway Authority should in the future appoint British recruits The Railway Authority will by its constitution be a strong and independent body, interested solely in the efficiency of the Railways, and able to secure for its personnel satisfactory conditions of service, moreover the policy of the Board in relation to recruitment will be subject to the directions of the Governor-General whenever in the opinion of the latter the interests of defence or his special responsibilities are involved.

The Ecclesiastical and Political Departments

302 We approve the proposal in the White Paper that the Secretary of State should continue to make appointments to the Ecclesiastical Department [1] Recruitment to the Political Department is indirect, vacancies being filled by transfers from the Indian Army and the Civil Service (mainly the Indian Civil Service) and, to a small extent, by the promotion of subordinate political officers The Governor-General approves transfers from the Indian Civil Service and the Indian Army, transfer from other All-India Services and promotions from the subordinate Services are approved by the Secretary of State on the recommendation of the Governor-General

Political Department posts

303 The Statutory Commission made no specific recommendations for the future organisation and recruitment of the Political Department, of which at present the Governor-General himself holds the portfolio Its total strength on 1st October, 1933, was 108 posts. These include, on the External side, the secretariat, district and judicial appointments in the North-West Frontier Province and Baluchistan, as well as the political agencies in tribal territory, political agencies on the Persian Gulf and a proportion of consular appointments in Persia, the civil administration of Aden and such

[1] White Paper, Proposal 183

appointments as those at the Legations in Afghanistan and Nepal and the Consulate-General at Kashgar On the Internal side they include the appointments to political agencies and residencies through which the relations of the Crown with the Indian States are conducted and the civil administration of the Chief Commissioner s Provinces of Coorg and Ajmer Merwara and of the assigned tract of Bangalore and other British cantonment areas in the Indian States.

Future recruitment.

304 The White Paper contemplates that after the commencement of the Constitution Act when the Governor-General assumes responsibility in his other capacity for conducting the relations of the Crown with the Indian States in matters not accepted as federal by their Rulers in their Instruments of Accession it may for political reasons be found desirable to make the duties of political officers in the Indian States interchangeable with those of political officers employed by the Governor-General in the Reserved Department of External Affairs We accept the view that there is no immediate need to divide and to recruit separately the personnel of the two Departments Responsibility for recruitment to both will remain with the Secretary of State. For the time being there may be practical convenience in filling appointments on the internal side by seconding officers from the Department of External Affairs more especially as the number of posts in either Department is comparatively small and the variety of functions assigned to them makes it desirable that the field of recruitment should be a wide one. Officers of the Indian Army and members of the Indian Civil Service appointed to the Department by the Governor-General and other officers appointed by the Secretary of State would enjoy the same measure of protection as we recommend should be accorded to officers appointed to the Services by the Secretary of State

The Forest Service.

305 Since 1924 the Forests in Bombay and Burma have been administered by a responsible Minister and under Provincial Autonomy this will in future be the case in all Provinces We emphasise the necessity for co-ordinated research in all forestry matters and we regard it as essential that the Central Institute at Dehra Dun for Forest Research should be maintained. But it is not only in research that co-ordination of effort between the different Provinces is and must continue to be, important. Each Province should know what the other Provinces are doing in such administrative matters as the preparation and carrying out of working plans. At present this co-ordination is secured through the Inspector-General of Forests with the Government of India. We think that in future co-ordination will best be secured by the creation of a Board of Forestry on which in addition to forestry experts representatives of the Provincial Governments would serve and we think that the Provinces should be empowered to combine for the purpose of setting up such a Board and contributing to its expenses

Future recruitment

306 We consider that appointments of the European and Indian officers required for the higher administrative posts in the Forest Service should in future be made in India. But in the case of a small and very technical service such as the Forest Service, we do not think that the best results could be obtained by separate Provincial recruitment, and we recommend therefore that the Provinces should from time to time, with the assistance of the Board of Forestry, prepare a joint statement of their collective requirements in the matter of personnel, entrusting the Federal Public Service Commission with the duty of recruitment on their behalf The actual appointment of recruits should, however, be made by the Provincial Government under whom they are intended to serve. We regard it as essential to the success of recruitment that a common training centre should be maintained, and we earnestly hope that the present College at Dehra Dun will be made available for that purpose. We hope also that Provincial Governments will continue the very useful practice of lending any officers required by the Federal Government for such purposes as the staffing of the Central Institute for Research and of the Training College and for forestry administration in the Andamans We think also that the Provinces should be willing to fill higher administrative posts from the Forest Service of another Province, if a suitable candidate from their own Province is not available In all these matters the Board of Forestry should be able to maintain effective touch between the various Provincial Governments.

The Irrigation Service

307 Irrigation under Provincial Autonomy will also come under the control of a responsible Minister We emphasize in this case also the paramount need for research and co-ordination The Royal Commission on Agriculture in India did not recommend the establishment of a central research station for reasons which we accept, but they expressed a strong opinion that Provinces should devote more attention to the various problems that confront Irrigation Engineers Unlike the Forests, there is no longer any officer with the Government of India who can give advice on Irrigation matters, although his place is to some extent taken by the present Central Board of Irrigation, which we consider should be developed on lines similar to those on which we have recommended the formation of a Board of Forestry An efficient organisation for the dissemination of information is also essential and we recommend that the existing Central Bureau of Information should be retained and developed on the lines suggested in the Royal Commission's Report

Present organisation

308 The higher administrative posts in the Irrigation Service are at present filled by members of the Indian Service of Engineers Since 1924, on the recommendation of the Lee Commission, recruitment of irrigation engineers has been in the proportion of 40 Europeans and 40 Indians for every 100 appointments, the remainder being filled by officers promoted from the Provincial Services, of whom the great majority are Indians In all cases, appointments are made by the Secretary of State

Future recruitment.

309 The continued recruitment of an adequate number of highly qualified engineers European as well as Indian is clearly essential to the efficiency of the irrigation system especially in the North West of India on which the prosperity and indeed the very existence of millions of the population depends It might well be argued that the Irrigation Service is for this comparable in importance within its own sphere to the Indian Civil Service and the Police Service and that its future recruitment and control should be in the same hands But after a close examination of the question our conclusion is that the Irrigation Service ought to become a Provincial Service and we are not convinced that even in the Punjab which is perhaps the crucial case the situation necessitates a different policy without at least first allowing the Province to prove that it can successfully recruit its own Service We are informed that there are at present 67 Europeans and 69 Indians in the Irrigation Branch of the Indian Service of Engineers in the Punjab and that if the recruitment of Europeans now ceased the number of Europeans would normally drop to 42 in 1939 and to 21 in 1949 that is to say there would be for some years unless some incalculable factor intervened such as greatly increased retirements on proportionate pension a sufficient number of fully trained officers both European and Indian to fill the most essential posts those of the three Chief Engineers and fifteen Superintending Engineers. The question of irrigation is scarcely of less importance in Sind but we think the Governor s special responsibility for the Sukkur Barrage is there a sufficient safeguard We think that the Provinces should seek the assistance of the Federal Public Service Commission and the Central Board of Irrigation in matters affecting recruitment

Question of future resumption of recruitment by the Secretary of State.

310 Nevertheless we are of opinion that a power to resume recruitment should be reserved to the Secretary of State if a Provincial Government unfortunately proved unable to secure a sufficient number of satisfactory recruits and it appeared that the economic position of the Province and the welfare of its inhabitants was thereby prejudiced and provision should accordingly be made for that purpose in the Constitution Act.

English personnel in Forest and Irrigation Services.

311 Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not of course imply that the Governments in India should abandon the recruitment of necessary personnel from England The High Commissioner for India in London already recruits specialist and expert officers of various kinds in England as the agent of the competent authorities in India and the Governments in India will doubtless continue this practice or may for certain purposes make use of the Civil Service Commission

Recruitment for other Services.

312 Under the White Paper proposals the Governments in India will have a free hand in regard to the recruitment for all other Services [1] We hope that the establishment of Public Service Commissions will assist them in this most responsible task, and we endorse the observations both of the Royal Commission in 1924 and of the Statutory Commission upon the vital necessity for excluding political or personal influences We desire to emphasize also the assistance which the federal Public Service Commission will be able to give to the Provincial Commissions in the establishment and maintenance, so far as the differing requirements and resources of the Provinces may admit, of common standards of qualifications and remuneration

Public Service Commissions

Public Service Commissions.

313 The Public Service Commissions at present existing in India are the Central Public Service Commission, established under the Government of India Act, and the Madras Service Commission, established under an Act of the Madras Legislature in 1929. The legislation necessary for setting up a Public Service Commission in the Punjab has been passed, but the establishment of the Commission awaits an improvement in the finances of the Province The White Paper proposes the continuance of the Central Public Service Commission as a federal organ, and the setting up in each Province of a Provincial Public Service Commission [2]

Their functions

314 The functions proposed for all these Commissions are advisory in character and similar to those at present performed by the Central and Madras Commissions [3] We regard it as essential that each Provincial Government should be able to avail itself of the advice of a Public Service Commission We recognise that it is not practicable to establish one Public Service Commission for all India, but we should view with some apprehension the setting up of some ten Provincial Public Service Commissions in addition to the Federal Public Service Commission We hope therefore that advantage will freely be taken of the proposed provision, which we cordially endorse, whereby the same Provincial Commission would be enabled to serve two or more Provinces jointly, or alternatively that it should be open to a Province to make use of the services of the Federal Public Service Commission, subject to agreement with the federal authorities Without accepting the proposals in the White Paper for the composition and working of these Commissions in every detail, we regard them as generally satisfactory

[1] White Paper, Proposal 190.
[2] White Paper, Proposal 195
[3] White Paper, Proposals 199-201.

Payment of Emoluments and Pensions

nds for e payment Service nolu- ents. 315 Before leaving this chapter of our Report we propose to deal with one matter of general interest to all classes of officers by whatever authority appointed that is to say the availability of cash for the payment of Service emoluments and more particularly for the payment of pensions of officers appointed by the Secretary of State

rtain ggestions jected 316 It appeared from the evidence tendered by the various Service Associations that there is apprehension among the Services on this point and we have very carefully considered whether it requires any special provision in the Constitution Act. We are clear in the first place that it would be undesirable to place officers appointed by the Secretary of State in a privileged position in respect of the provision of cash for current pay though it is to be remembered that their emoluments will not be subject to the vote of the Legislatures Regular and punctual payment of emoluments is a legitimate interest of all persons in the Public Services and no one class of officers can be admitted to have a prior claim in this respect. On the more general question we have examined suggestions which have been made for a system of prior charges or for building up a reserve fund. We are informed that the percentage of the total annual revenues of a Province which would be required for the payment of all Service emoluments may be taken as approximately 40 per cent and we are satisfied that in respect of payments which constitute so large a proportion of the total annual liabilities of a Province the suggestions are quite impracticable.

No special rovision equired. 317 In so far as the apprehension may be that a temporary deficiency might occur in the cash required to meet such current obligations as the issue of monthly pay not through any failure in the annual revenues but through excessive commitments in other directions the good sense of the Government and the advice of a strong Finance Department must in our opinion be relied on as the real safeguard Nor must it be forgotten that although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the Province it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities including of course his special responsibility for safeguarding the legitimate interests of the Services If need arose for the Governor to take special steps for the purpose in virtue of his special responsibilities it would, of course be open to him to adopt whatever means were most appropriate in the circumstances and if necessary to meet the situation by borrowing The powers available to him personally in this respect would be identical with those available to the Provincial Government If he should seek assistance from the Federal

Government in the form of a loan, his application would be governed by the provision relating to provincial borrowing which we have already advocated[1] The Governor-General will, of course, be responsible for securing the interest of officers serving at the Centre

Claims for pensions by officers appointed by the Secretary of State.

318 We have said that no distinction can, or ought to be, drawn between the claim of the various classes of officers serving in a Province for the due payment of their emoluments, but to this general statement of principle we think that there should be one qualification. If difficulties should unfortunately arise in regard to a claim to pension by an officer appointed by the Secretary of State who has served from time to time in different Provinces, we think that it would be unreasonable that he should have to make his claim against a number of authorities in respect of different portions of his pension We therefore approve the proposal in the White Paper that the claims of all officers appointed by the Secretary of State for their pensions should be against the Federal Government direct, the necessary adjustments being made subsequently between the Federal Government and the Province or Provinces concerned[2], and, if that recommendation is adopted, we think that officers appointed by the Secretary of State need have no anxiety regarding the regular and punctual payment of their own pensions and those of their dependants Pensions of retired officers, if appointed before the commencement of the Constitution Act, and the pensions of their dependants, will be exempt from Indian taxation if the pensioner is residing permanently outside India The pensions of officers appointed by the Secretary of State or by the Crown after that date and the pensions of their dependants will also be exempt from Indian taxation if the pensioner is residing permanently outside India Existing rights of suit against the Secretary of State will be preserved[3]

Binding nature of obligation in respect of pensions

319 We should not, however, wish to leave this subject without making a general statement in regard to the pensions of these officers These pensions, like the pensions of all retired members of the Public Services of India, are a charge upon the revenues of India, and there can be no more binding obligation resting upon the Government of India than to meet this charge in full and ungrudgingly But, though we do not doubt that it will be so met, the obligation rests not only upon the Government of India to meet it, but also upon His Majesty's Government to see that it is so met His Majesty's Government have, in fact, pledged the revenues of India for this purpose, and it is their duty to see that that pledge is made effective The Governor-General must, therefore, be armed with full powers to meet the liabilities thus secured upon the revenues of India, and our approval of the proposals of the White Paper is based on the understanding that the Constitution Act will in fact arm him with such powers

[1] *Supra*, para 266
[2] White Paper, Proposal 186.
[3] *Infra*, para. 387.

This jurisdiction is to be an exclusive one and in our opinion rightly so since it would be altogether inappropriate if proceedings could be taken by one Unit of the Federation against another in the Courts of either of them For that reason we think that, where the parties are Units of the Federation or the Federation itself the jurisdiction ought to include not only the interpretation of the Constitution Act but also the interpretation of federal laws by which we mean any laws enacted by the Federal Legislature

Appellate jurisdiction of Federal Court.

325 It is also proposed that the Federal Court shall have an exclusive appellate jurisdiction from any decision given by the High Court or any State Court so far as it involves the interpretation of the Constitution Act or of any rights or obligations arising thereunder but that no appeal shall lie except with the leave of the Federal Court or of the High Court *of the Province or State or unless in a* civil case the value of the subject matter in dispute exceeds a specified sum. In this case also we think that the jurisdiction ought to be extended to include the interpretation of federal laws. It is essential that there should be some authoritative tribunal in India which can secure a uniform interpretation of federal laws throughout the whole of the Federation We had at first thought on a con stitutional issue appeal should lie without leave but we appreciate that in a country where litigation is so much in favour this might result in an excessive number of unnecessary appeals. We therefore approve the proposal in the White Paper though we think that the Federal Court ought to have a summary power of disposing of appeals or applications for leave to appeal in any case where they appear to be frivolous or vexatious or brought only for the purposes of delay It was urged before us that to permit a litigant in a State Court to apply to the Federal Court for leave to appeal if the State Court had already refused leave would be to derogate from the sovereignty of the Ruler of the State and that the refusal of a State Court to grant leave to appeal at any rate in a case concerning the interpretation of Federal laws should be treated as final. We should much regret the inclusion of a provision of this kind The appellate jurisdiction of the Federal Court so far as regards an Indian State arises from the voluntary act of the Ruler himself viz his accession to the Federation the jurisdiction is in no sense imposed on him *ab extra* This being so and since it is proposed that all appeals to the Federal Court should be in the form of a Special Case to be stated by the Court appealed from we think the position of the States would be appropriately safeguarded if it were provided that the granting of leave to appeal by the Federal Court were in the form of Letters of Request directed to the Ruler of the State to be transmitted by him to the Court concerned.

Appeals to Privy Council.

326 The appeal to the Privy Council is preserved and it is proposed that an appeal shall lie without leave in any matter involving the interpretation of the Constitution Act but in any other case only by

leave of the Federal Court (without prejudice to the grant of special leave by His Majesty), unless the value of the subject matter in dispute exceeds a specified sum We have no comment to make on this proposal, except that we assume that the jurisdiction of the Privy Council will extend to appeals involving rights and obligations arising under the Constitution Act, as well as the interpretation of the Act itself Effect will be given to the decisions of the Federal Court, as is the case with decisions of the Privy Council, by the Courts from which the appeal has been brought, and all Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves We may perhaps point out that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of the Rulers themselves, *i e*, their Instruments of Accession

Advisory jurisdiction of Federal Court

327. It is proposed that the Federal Court shall have a jurisdiction similar to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833, which provides that His Majesty may refer to the Committee for hearing or consideration any matters whatsoever as His Majesty may think fit, and that the Committee shall thereupon hear and consider the same, and shall advise His Majesty thereon The expression used in the White Paper is " any justiciable matter which the Governor-General considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it " Exception was taken to the word " justiciable," and we think perhaps that " any matter of law " would be preferable We concur generally in the proposal, and we are of opinion that this advisory jurisdiction may often prove of great utility We agree that it need not be limited to the federal sphere and that the right of referring any matter to the Court for an advisory opinion should be in the Governor-General's discretion

Appointment and salaries of Federal Judges

328 It is common ground that the Federal Judges should be appointed by the Crown, and we think that their salaries should be specified in the Constitution Act or determined by His Majesty in Council and not subject to variation without the assent of Parliament.

The Supreme Court

Proposal for future establishment of a Supreme Court

329 The White Paper proposes that the Federal Legislature should be empowered to establish a separate Supreme Court to hear appeals from the provincial High Courts (1) in civil cases and (2) in criminal cases where a death sentence had been passed, provided of course that an appeal did not lie to the Federal Court The Court would in effect take the place of the Privy Council, though an appeal would still lie to the latter by leave of the Supreme Court or by special leave of His Majesty We have given very careful consideration to this proposal, but we do not feel able to recommend its adoption A Supreme Court of this kind would be independent of, and in no

sense subordinate to the Federal Court but it would be impossible to avoid a certain overlapping of jurisdictions owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes and we are satisfied that the existence of two such Courts of co-ordinate jurisdiction would be to the advantage neither of the Courts themselves nor of the Federation. There is much to be said for the establishment of a Court of Appeal for the whole of British India but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal Court and we think that the Legislature should be empowered to confer this extended jurisdiction upon it It has been objected that not only would so great an increase in the personnel of the Court be required as to make it difficult to find a sufficient number of Judges with the necessary qualifications but also that the essential functions of the Federal Court as guardian and interpreter of the Constitution would tend to become obscured. We fully agree that the quality of the Federal Judges is a matter of the highest importance and that nothing ought to be done which might diminish or impair the position of the Court in its constitutional aspect but we think that the fears expressed are unfounded In the first place it is clear that there would have to be a strict limitation on the right of appeal, so as to secure that only cases of real importance came before the Court and if this were done we see no reason why a comparatively small number of additional Judges should not suffice. Secondly we assume that the Court would sit in two Chambers the first dealing with federal cases and the second with British India appeals The two Chambers would remain distinct though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber as the Chief Justice might direct or Rules of Court provide but beyond this we do not think that the two Chambers should be interchangeable

A Court of Criminal Appeal not recommended

330 The Supreme Court under the White Paper proposals would however as we have said have jurisdiction to hear certain criminal appeals from British India We are satisfied that these would be so numerous that if the Federal Court were given the extended jurisdiction which we have suggested an increase in the number of Judges would be required in excess of anything which we should be willing to contemplate. The question then arises whether the Federal Legislature should be empowered if and when they thought fit to set up a separate Court of Criminal Appeal for British India, subordinate to the Federal Court After careful consideration we have come to the conclusion that a Court of Criminal Appeal is not required in India. Nearly every case involving a death sentence is tried in a District Court from which an appeal lies to the High Court and apart from this no death sentence can be carried out until it has been confirmed by the High Court Only three of the High Courts

(excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of sentence to the Provincial Government, or, if he wishes, can ask for special leave to appeal to the Privy Council In these circumstances, the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would be served by adding yet another Court to which appeals can be brought We should add that at present under the Criminal Procedure Code, a condemned prisoner can apply for commutation of his sentence not only to the Provincial Government but also to the Governor-General in Council We think that under the new Constitution the determination of applications for commutation or remission of sentence under Section 401 of the Code should rest with the authority primarily responsible for the preservation of law and order, namely, the Provincial Government, and that the Federal Government, that is to say the Governor-General acting on the advice of his Ministers, as the successor of the Governor-General in Council, should no longer possess this statutory power of commuting or remitting sentences At the same time, we are reluctant to diminish the opportunities for appeal which are at present enjoyed under the Indian Law, and we recommend that the power now exercisable in this respect by the Governor-General in Council should henceforth vest in the Governor-General acting in his discretion, to whom in addition there will, we assume, be delegated as at present the prerogative power of pardon

The High Courts

The High Court Judges

331 The constitution of the Provincial High Courts, which enjoy a deservedly high reputation throughout British India, is hardly directly affected by the White Paper proposals[1], but we note the following points It has been represented to us that the retiring age of Judges should not be raised to sixty-two, but should continue to be sixty, and we concur We have suggested that in the case of the Federal Court the age should be sixty-five, because it might otherwise be difficult to secure the services of High Court Judges who have shown themselves qualified for promotion to the Federal Court, but the evidence satisfies us that in India a Judge has in general done his best work by the time he has reached the age of sixty We note also that the present statutory requirement that not less than one-third of the Judges of every High Court must have been called to the English, Scottish, or Irish Bar, and that not less than one-third must be members of the Indian Civil Service, is to be abrogated We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore dissent from the proposed amendment of the law; but we are clear (and we are informed that this is the general opinion of

[1] White Paper, Proposals 168–175

their colleagues) that the Indian Civil Service Judges are an important and valuable element in the judiciary and that their presence adds greatly to the strength of the High Courts. It has been suggested that their earlier experience tends to make them favour the Executive against the subject but the argument does not impress us we are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which barristers and pleaders from the towns may not always possess and we do not doubt that the Crown will continue to appoint them The Indian Civil Service Judges are not at the present time eligible for permanent appointment as Chief Justice of a High Court though we understand that this rule does not apply in the case of Chief Courts We see no reason for this invidious distinction and we think that His Majesty s freedom of choice should not be thus fettered. We need hardly add that our acceptance of the proposal to abrogate the statutory proportion so far as barristers are concerned implies no doubt as to the necessity of continuing in the interests of the maintenance of British legal traditions to recruit a reasonable proportion of barristers or advocates from the United Kingdom as Judges of the High Courts As regards the tenure of High Court Judges we think that it should be the same as that which we have recommended for Judges of the Federal Court.[1]

Administrative machinery of High Courts.

332. The administrative machinery of the High Courts is at the present time (save in the case of the Calcutta High Court) subject to the control of the Provincial Governments and Legislatures and there is evidence that the latter have from time to time tended to assert their powers in a way which might under the new Constitution affect the efficiency of the Courts The White Paper proposes that in future any expenditure certified by the Governor after consultation with his Ministers to be required for the expenses of the High Court shall not be submitted to the vote of the Legislative Assembly though it will be open to discussion by them[2] We think that in the circumstances this is a reasonable arrangement and will avoid the difficulties to which we have referred.

Administrative control of High Courts should remain with Provincial Government.

333 It follows from this recommendation that we are not at one with the Statutory Commission in thinking[3] that the administrative control of the High Courts should be placed in the hands of the Central Government and that the expenditure required for them and the receipts from court fees should be included in the Central Government s Budget We agree entirely with the Commission that the arrangement whereby in consequence of the historical connection for certain purposes between the Calcutta High Court and the Government of India decisions as to the strength of that Court and its establishment and as to its financial requirements for buildings or other purposes rest with the Central Government though the extra expenditure involved by such decisions falls upon the

[1] *Supra* para. 323
[2] White Paper Proposal 93 (iii)
[3] Report, Vol. II paras. 341–349

Bengal Government, is an anomaly which ought to be terminated ; but, in our view, it should be terminated not by placing financial responsibility for the Calcutta High Court (and incidentally for all other High Courts) upon the shoulders of the Federal Government, but by bringing the Calcutta Court into the same relationship with the Bengal Government as that obtaining between all other High Courts and their respective Provincial Governments. We agree, moreover, most fully with the Commission's view as to the importance of securing for the High Courts a position of independence and the largest possible measure of freedom from pressure exerted for political ends This object should, we think, be fully secured by the recommendation which we made in the last paragraph But, subject to the fulfilment of this requirement, the High Court is, in our view, essentially a provincial institution indeed, as subsequent paragraphs show, we seek to secure for each High Court an administrative connection with the Subordinate Judiciary of the Province which we regard as of the highest importance, and which we think could not be maintained—or only in an atmosphere of mistrust and suspicion which would gravely detract from its advantages—if the Court were an outside body, regarded (as it would probably be) as an appanage of the Federal Government. Apart from these reasons, which we regard as conclusive, in favour of maintaining the present relationship between the High Courts and the Provincial Governments (subject only to the modification required to bring the Calcutta High Court into the same position as that of the others), we are satisfied that the financial adjustments which would be involved in any attempt to centralise the administration and financing of the High Courts would be of a far more complicated nature than the Commission appear to have supposed

Federal and Provincial Legislation in relation to the High Courts

334 We observe that the Federal Legislature is to have an exclusive power to make laws touching the jurisdiction, powers and authority of all Courts in British India (except the Federal Court and the Supreme Court) with respect to the subjects on which it is exclusively competent to legislate, and that the Provincial Legislatures will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are exclusively competent to legislate It has been suggested that this would enable either the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to Courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India In theory this is no doubt possible , but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law-making power for the purposes which we have mentioned, and, whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High

Courts Our information is indeed that so great is the confidence felt in the impartiality and ability of the High Courts a converse policy is much more likely if the past is any guide to be adopted But, in order that the position of the High Courts may be fully safeguarded we recommend that the Governor-General and Governors should be directed in their Instruments of Instruction to reserve for the signification of His Majesty s pleasure any Bill which in their opinion would so derogate from the powers of the High Court as to endanger the position which those Courts are under the Constitution Act clearly designed to fill We think that it is also of great importance that the powers of the High Courts referred to in the Committee s Records[1] should be defined and confirmed by the Constitution Act even where at present they rest on the authority of the Provincial Government. We should add that in later paragraphs[2] we make recommendations which are designed to confirm and strengthen the arrangements existing in many Provinces whereby the High Courts are given a large measure of control over the personnel of the Subordinate Judiciary but we also think that provisions settling definitely the nature of the administrative superintendence to be exercised by the High Courts over the Subordinate Courts in a Province should find a place in the new Constitution

Future constitutional position of High Courts.

335 We think it desirable to explain the general effect of our recommendations upon the High Courts. Their constitution will as at present be laid down in the Constitution Act and the appointments to them will remain with the Crown the Constitution Act will moreover itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the Subordinate Courts of the Province—the nature and extent in fact, of what may be described as their administrative jurisdiction No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and buildings except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct and not as at present with the Central Government (which even as matters stand naturally consults the Bengal Government upon any proposals laid before it by the Court) but the supply required by the High Court will be determined by the Governor after consultation with his Ministers and will not be subject to the vote of the Provincial Legislature. As regards the juridical jurisdiction of the High Courts in so far as this depends—as it mainly does depend—upon provisions of Indian enactments it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court s jurisdiction arise that is to say it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate,

[1] Records [1932–33] pp 34–35, paras. 12–13.

[2] *Infra*, paras. 339–340

for the Provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively provincial subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate It will thus be seen that the High Courts, under our proposals, will be institutions which will not accurately be described as either federalised or provincialised

Protection of Judiciar from criticism i Legislatures

336 In concluding this portion of our Report we desire to call attention to the importance of safeguarding the Judiciary from criticism in the Legislatures of their conduct in the discharge of their duties The rule and practice of Parliament protect the Judiciary from such criticism in this country and we recommend that adequate provision should be made to safeguard Judges in India also

The Subordinate Judiciary

Necessity for securin indepen-dence of sub-ordinate judiciary

337 This subject is not mentioned in the White Paper, but there are aspects of it which seem to us of such importance that we think it right to state our opinion upon them. The Federal and High Court Judges will be appointed by the Crown and their independence is secure, but appointments to the Subordinate Judiciary must necessarily be made by authorities in India who will also exercise a certain measure of control over the Judges after appointment, especially in the matter of promotion and posting We have been greatly impressed by the mischiefs which have resulted elsewhere from a system under which promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed to pressure from members of a popularly elected Legislature Nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister, and recent examples (not in India) have shown very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known, or believed, to have the means of bringing influence to bear upon a Minister It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges We have given anxious consideration to this matter and our recommendations are as follows

Candidates seeking to exercise political influence should be dis-qualified

338 A strict rule ought in our opinion to be adopted and enforced, though it would be clearly out of place in the Constitution Act itself, that recommendations from, or attempts to exercise influence by, members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be We would admit no exception to this rule, which has for many years

past been accepted without question in the Civil Service of the United Kingdom We do not for a moment suggest that Indian Ministers will be willing to adopt any lower standards but this is a matter in which the right principle ought to be laid down at the very outset of the new constitutional order and the observations which we have thought it our duty to make may perhaps serve in the future to strengthen the hands of Ministers who find themselves exposed to improper pressure from those whose standards may not be as high as their own.

(a) *The Civil Judiciary*

Subordinate Judges and Munsiffs.

339 In the case of Subordinate Judges and Munsiffs the Provincial Government—that is to say the Governor advised by the appropriate Minister—after consultation with the Public Service Commission and with the High Court should make rules defining the standard of qualifications for candidates seeking to enter the Judicial service Candidates should be selected for appointment by the Public Service Commission in consultation with the High Court subject to any general regulations made by the Provincial Government as to the observance of communal proportions The Minister would be informed by the Commission of the candidate or the candidates selected by them and the appointment would be made by the Governor on the Minister s recommendation. The Public Service Commission would of course act in an advisory capacity only but we cannot conceive that any Minister would reject their advice or recommend an appointment without it We think it of first importance that promotions from grade to grade or from the rank of Munsiff to that of Subordinate Judge and also the leave and postings of Munsiffs and Subordinate Judges should be in the hands of the High Court subject to the usual rights of appeal of the officer affected.

District Judges

340 In the case of District Judges or additional District Judges first appointment should if the candidate is a member of the Indian Civil Service be made by the Governor on the recommendation of the Minister after consultation with the High Court. A recommendation by the Minister for the appointment of a member of the subordinate judicial service should only be made with the approval of the Public Service Commission and of the High Court. A recommendation for a direct appointment from the Bar should be made from among persons nominated by the High Court subject to any general regulations in force regarding communal proportions A District Judge should only be promoted (except in the case of automatic time scale promotions) on a recommendation by the Minister after consultation with the High Court and the same rule should apply to postings. In all the cases covered by this paragraph we think that the Governor should have a discretion to reject a recommendation if he does not concur with it.

(b) The Criminal Magistracy

Deputy magistrates and tehsildars

341 In the case of deputy magistrates, sub-deputy magistrates and tehsildars, the High Court have little knowledge of their judicial work, and none at all of the work which a large number of them perform in their executive or administrative capacities Candidates for a first appointment to these posts should be selected by the Public Service Commission, and the appointment should be made from the candidates so selected by the Governor on the recommendation of the Minister In the case of subsequent promotions or postings, the Minister should ask for the recommendations of the district magistrate, in consultation, where necessary, with the Sessions Judge of the district in which the subordinate magistrate works, and we think that, if these recommendations are disregarded, some machinery should be devised for bringing the matter to the notice of the Governor

(5) Commercial and other Forms of Discrimination

inition roblem. 342 The importance attached in this country to this part of the Indian constitutional problem has been much misunderstood in India We believe that our first duty is to define it in such a way as to remove this misunderstanding In our view the problem is divisible into two entirely separate issues The only one of these issues dealt with in the White Paper is the question of administrative and legislative discrimination against British commercial interests and British trade in India. With this issue we deal in detail in later paragraphs [1]

The Fiscal Convention. 343 The other issue which we now proceed to consider is that of discrimination against British imports As is well known the fiscal relations between the United Kingdom and India have now been regulated for some thirteen years by the recommendations of the Joint Committee on the Bill of 1919—commonly known as the Fiscal Convention It is a commonplace that the exact scope and effects of this Convention have afforded much ground for discussion and that the Convention has not—as indeed could hardly have been expected—succeeded in placing beyond controversy the rights and duties of the two parties to it But with the passing of a new Constitution Act on the lines of the recommendations which we make in this Report the Convention in its present form at all events will necessarily lapse and unless the Constitution Act otherwise provides the Federal Legislature will enjoy complete fiscal freedom with little in the nature of settled tradition to guide its relationship in fiscal matters with this country The difficulties which would be likely to arise from this uncertainty would moreover find a fruitful source of increase in that atmosphere of mis*understanding to which we have alluded. It is suggested in India* that in seeking to clarify the fiscal relations between India and themselves His Majesty's Government are seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages for British at the expense of Indian trade. The suggestion is without foundation but can be countered only by clear proposals which will show how false it is On the other hand statements of a very disturbing character have been made from time to time by influential persons in India which have aroused suspicions and doubts in the United Kingdom. In these circumstances appropriate provisions in the Constitution Act may serve the double purpose of facilitating the transition from the old to the new conditions and of reassuring sensitive opinion in both countries. Certainly such provisions would in no way imply a belief that there is real ground for the apprehensions entertained on either side.

[1] *Infra* paras. 347–385

The Fiscal Convention and the new Constitution.

344. But in making our recommendations to this end, we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal Convention Fears have, indeed, been expressed lest the exercise by the Indian Legislature of the powers contemplated in the Convention might result in the imposition of penal tariffs on British goods or in the application to them of penally restrictive regulations with the object not, of fostering Indian trade, but of injuring and excluding British trade. The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy, and we have been assured by the Indian Delegates that there will be no desire in India to utilise any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are based But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Constitution Act of the principles governing the relations between the two countries The machinery of the Governor-General's special responsibilities, supplemented by his Instrument of Instructions, offers India and the United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application

Governor-General should have a special responsibility to prevent penal discrimination against British imports

345 We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows —"The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment"[1] But, as it is important that the scope which we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy, that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions, and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom It should further be made clear that the "discriminatory or penal

[1] See also *infra*, para 471

treatment covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products and that the Governor General s special responsibility *could also be used to prevent the imposition of prohibitory* tariffs or restrictions if he were satisfied that such measures were proposed with the intention already described In all these respects the words would cover measures which though not discriminatory or penal in form would be so in fact

Principles of future trade relations between India and United Kingdom

346 But although the Instrument of Instructions affords the means of defining more fully than would be possible in the Act itself the scope and purpose of the special responsibility which the Act should confer even this document cannot conveniently be utilised as the means of explaining the broad principles upon which *in our view the future trade relations between India and the United* Kingdom should be based. We wish therefore to express our own conception of these principles We think that the United Kingdom and India must approach their trade problems in a spirit of reciprocity which views the trade between the two countries as a whole Both countries have a wide range of needs and interests in some of these each country is complementary to the other while in some each has inevitably to look rather to a third country for satisfactory arrangements of mutual advantage The reciprocity which as partners they have a right to expect from each other consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either partner from entering into special agreements with third countries for the exchange of particular commodities where such agreements offer it advantages which it cannot obtain from the other but the conception does imply that when either partner is considering to what extent it can offer special advantages of this kind to a third country without injustice to the other partner it will have regard to the general range of benefits secured to it by the partnership and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.

Discrimination against British trade in India.

347 We turn now to the other issue presented by this Chapter of our Report namely the prevention of discrimination against British trade in India The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile com*munity firms and companies trading in* India and the rights of Indian born subjects. Witnesses who appeared before us spoke in the same sense and the British-India Delegation in their Joint Memorandum state that on the question of principle there has

always been a substantial measure of agreement in India On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment for British trade as against Indian trade. Their policy is, in fact, one of a fair field and no favour The question, therefore, resolves itself into a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned It may, indeed, be asked why, in view of the assurances of which we have spoken, it is necessary to deal with this matter at all in the Constitution Act, and to this our answer must be that, here again, utterances have been made which could not fail to give rise to suspicions and doubts, and that statutory provision by way of re-assurance is an evident necessity

Administrative discrimination.

348 Discrimination may be of two kinds, administrative or legislative We are satisfied that, with regard to administrative discrimination, a statutory prohibition would be not only impracticable but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive We agree, however, with the proposal in the White Paper[1] that the Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have a discriminatory effect, to intervene and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility But, if our subsequent recommendations on the subject of legislative discrimination are accepted, we think it should be made clear in the Constitution Act that this special responsibility extends to the prevention of administrative discrimination in any of the matters in respect of which provision against legislative discrimination is made under the Act

Legislative discrimination.

349 We have said that it is in our view impossible to attempt any precise definition, with a view to its prohibition, of administrative discrimination Legislative discrimination, however, stands upon a different footing, and it is in our judgment possible to enact provisions against it We do not forget that to the Statutory Commission the technical objections to any attempt to define discriminatory legislation in a constitutional instrument seemed decisive[2], but we observe that the Federal Structure Committee in their Fourth Report, which was adopted by the Second Round Table Conference, saw "no reason to doubt that an experienced parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a court of law to interpret and make effective" The opinion of a body which contained so many distinguished lawyers must carry great weight, and we concur with

[1] White Paper, Proposals 18 and 70.
[2] *Report, Vol II, para 156*

them in thinking that the attempt should be made We do not think that the White Paper proposals on the subject are very clear or precise and in the paragraphs which follow we shall indicate the statutory provisions which, as it seems to us ought to find a place in the Constitution Act

General considerations.

350 We think it right to make by way of preface some general observations Firstly we express our entire agreement with the statement of the British India Delegation in their Joint Memorandum that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter and we shall have certain suggestions to make later on this aspect of it Secondly we are of opinion that these arrangements can only be extended to include the relations between India and other parts of His Majesty s Dominions by mutual agreement Lastly we think that so far as possible any statutory enactment should be based upon the principle of reciprocity

Laws imposing certain conditions and restrictions should not apply to British subjects domiciled in the United Kingdom.

351 Subject to what we say hereafter on the question of reciprocity we are of opinion (1) that no law[1] restricting the right of entry into British India should apply to British subjects domiciled in the United Kingdom but there should be a saving for the right of the authorities in India to exercise any statutory powers which they may possess to exclude or remove undesirable persons whether domiciled in the United Kingdom or elsewhere and (2) that no law relating to taxation travel and residence the holding of property the holding of public office or the carrying on of any trade business or profession in British India should apply to British subjects domiciled in the United Kingdom, in so far as it imposes conditions or restrictions based upon domicile residence or duration of residence language race religion or place of birth.

Companies incorporated in the United Kingdom and in India.

352. As regards companies we are of opinion (1) that a company incorporated now or hereafter in the United Kingdom should when trading in India be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India or to the domicile residence or duration of residence language race religion descent or place of birth of the directors shareholders or of the agents and servants of such companies and (2) that British subjects domiciled in the United Kingdom who are directors shareholders servants or agents of a company incorporated now or hereafter in India should be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated relating to the domicile residence or duration of residence language race religion descent or place of birth of directors shareholders agents or servants.

[1] Law throughout these paragraphs is intended to include any regulations, bye-laws etc., by whomsoever made, having the force of law

Provisions should be on basis of reciprocity

353 There should however be reciprocity between India and the United Kingdom, and accordingly if a United Kingdom law imposes in the United Kingdom upon Indian subjects of His Majesty domiciled in India or upon companies incorporated in India conditions, restrictions or requirements in respect of any of the above matters from which in India British subjects domiciled in the United Kingdom and companies incorporated in the United Kingdom would otherwise be exempt, the exemption enjoyed by the latter would *pro tanto* cease to have effect.

Shipping

354 We think that separate provision should be made for the case of ships and shipping, and it should be enacted that ships registered in the United Kingdom are not to be subjected by law in British India to any discrimination whatsoever, as regards the ship, officers or crew, or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom

Exceptions.

355 We are satisfied that there would have to be certain exceptions Thus, the statutory provisions which we have suggested ought not to affect any laws in force at the commencement of the Constitution Act, or laws which exempt from taxation persons not domiciled or resident in India

Bounties and subsidies

356 A further exception seems necessary in connection with the Indian Acts, Federal or Provincial, which authorise the payment to companies or firms of grants, subsidies or bounties out of public funds for the purpose of encouraging trade or industry in India A Committee, known as the External Capital Committee, in 1925 recommended that certain conditions should be attached to grants of this kind and their recommendations were adopted, and have since that date been acted upon, by the Government of India These seem to us to have been conceived in a very reasonable spirit, and we do not think that any objection could be taken to them But we think that a distinction may properly be drawn between companies already engaged, at the date of the Act which authorizes the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently, and we therefore recommend that in the case of the latter it may be made a condition of eligibility for the grant that the company should be incorporated by or under Indian law, that a proportion of the directors (which should, we think, not exceed one half of the total number) shall be Indians, and that the company shall give such reasonable facilities for the training of Indians as the Act may prescribe In the case of the former, the reciprocal provisions which we have suggested would continue to apply, and the company should be equally eligible to participate in the grant with Indian companies

Bills discriminatory in fact though not in form

357 But it will still be the duty of the Governor-General and of the Governors to exercise their discretion in giving or withholding their assent to Bills And we think that the Instrument of Instructions should make it plain as we have already indicated in connection with the Governor-General s special responsibility in relation to tariffs that it is the duty of the Governor-General and of the Governors in exercising their discretion in the matter of assent to Bills not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination but to withhold their assent from any measure which though not in form discriminatory would in their judgment have a discriminatory effect. We have made we hope sufficiently plain the scope and the nature of the discrimination which we regard it as necessary to prohibit and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have in view We are conscious however of the difficulty of framing completely watertight prohibitions and of the scope which ingenuity might find for complying with the letter of the law in a matter of this kind while violating its spirit. It is in our view an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all Bills of their Legislature should be free and unfettered and, in this difficult matter of discrimination in particular we should not regard this condition as fulfilled if the Governor-General and Governors regarded the exercise of their discretion as restricted by the terms of the statutory prohibitions We further recommend that the Instrument of Instructions of the Governor-General and the Governor should require him if in any case he feels doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination to reserve the Bill for the signification of His Majesty's pleasure We need hardly add that the effect of our recommendations for the statutory prohibition of certain specified forms of discrimination would lay open to challenge in the Courts as being *ultra vires* any legislative enactment which is inconsistent with these prohibitions even if the Governor-General or the Governor has assented to it.

Practice of professions.

358. Our attention has been called to the question of the qualifications required for the practice of the different professions in India and the suggestion has been made that persons holding United Kingdom qualifications ought to be secured a statutory right to practise in India by virtue of those qualifications The case of medical practitioners has features of its own and we deal with it separately in the paragraphs which follow but with regard to professional qualifications in general we are unable to accept the suggestion Except in certain cases in which a qualification has been specially recognised by or under some Indian law as giving a title to practise persons holding United Kingdom qualifications at present follow their

professions in India without restraint, but have always been subject to such restrictions as the present Indian Legislatures might have imposed. We think that the Indian Legislatures of the future should equally be free to prescribe the conditions under which the practice of professions generally is to be carried on But it seems to us that the vested interests of those who are practising a profession in India at the commencement of the new Constitution Act may properly be safeguarded , and we think that they should have a right to continue to practise notwithstanding any future Act which may be passed by any Indian Legislature requiring Indian qualifications as a condition of practice We may however be permitted to express the hope that, when the different professions in India become, as we hope they will, organised and controlled by their own governing bodies, arrangements will be freely made with the corresponding bodies in the United Kingdom for the mutual recognition in both countries of the qualifications prescribed by each, or at least that mutual facilities will be given for their acquisition

Burma

359 On the assumption that Burma will be separated from British India we think that British subjects domiciled in India ought to be accorded in Burma the same treatment which would be given in India to British subjects domiciled in the United Kingdom, save as regards the right of entry into Burma, on which, in view of the special circumstances, we shall have recommendations to make in due course. These matters would fall to be dealt with in the separate legislation which will be required to establish the new constitutional machinery in Burma , but it will also be necessary to consider to what extent corresponding treatment should be accorded in India to British subjects domiciled in Burma, provision for which would find a place in the Indian Constitution Act , and our recommendations on this matter also will be found in that Section of our Report which deals with Burma [1]

Opportunity should be given for conventional arrangements in the future

360 We have expressed our concurrence with the statement in the British-India Joint Memorandum that " a friendly settlement by negotiation is by far the most appropriate and satisfactory method " of dealing with the question of discrimination At the first Round Table Conference the Report of the Minorities Sub-Committee was adopted which contained a paragraph to the effect that there should be no discrimination between the rights of the British mercantile community trading in India and the rights of Indian born subjects, and that " an appropriate Convention based on reciprocity should be entered into for the purpose of regulating these rights " It was suggested by some that a Convention for this purpose should be negotiated forthwith, and it was argued that in that event statutory provision in the new Constitution would be rendered unnecessary We have no doubt however that such a Convention, designed to regulate rights under a new constitutional order, could not with propriety be made except with the new Indian Government, and that the proposal made in January, 1931, was for that reason

[1] *Infra*, paras 471-476

impracticable. Nevertheless since we hold strongly that the conventional is preferable to the statutory method and that agreement and goodwill form the most satisfactory basis for commercial relations between India and this country we think that there should be nothing in the Constitution which might close the door against a Convention We recommend accordingly that His Majesty if satisfied that a Convention has been made between His Majesty s Government in the United Kingdom and the new Government of India covering the matters with which we have already dealt in this chapter of our Report and that the necessary legislation for implementing it has been passed by Parliament and by the Indian Legislature should be empowered to declare by Order in Council that the statutory provisions in the Constitution Act shall not apply so long as the Convention continues in force between the two countries It may be said that the practical result will be exactly the same and this no doubt is true but the merit of the proposal as we see it, is that it would enable the Indian Government and Legislature if they so desire to substitute a voluntary agreement for a statutory enactment and would therefore give to the arrangements for the reciprocal protection of British subjects in India and the United Kingdom respectively the conventional basis which in our judgment it is most desirable that they should have

Medical Qualifications

Provisions of Medical Act, 1886.

381 The question of the mutual recognition of medical practitioners in the United Kingdom and British India has unhappily become a matter of political controversy in India during the last few years and in view of its importance to both countries it seems desirable that we should describe shortly the present position The Medical Act 1886 empowers His Majesty by Order in Council to apply the Act to any British possession which in the opinion of His Majesty affords to the registered medical practitioners of the United Kingdom such privileges of practising in the said British possession as to His Majesty may seem just The Act has been applied to British India in view of the recognition there accorded to practitioners registered in the United Kingdom and this entitles any person who holds an Indian medical diploma recognised for the time being by the General Medical Council as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine surgery and midwifery to be registered on application in the United Kingdom medical register The Act also provides that where the General Medical Council have refused to recognise a medical diploma for this purpose the Privy Council on application being made to them may if they think fit after considering the application and after communication with the General Medical Council order the latter to recognise the diploma and the Council are thereupon under a statutory obligation to do so It will thus be seen that, though the Act is based upon the principle

of reciprocity, the General Medical Council is not compelled to give an automatic recognition to each and every diploma conferred *in the other countries to which the Act applies, but is entitled,* subject to an appeal to the Privy Council, to satisfy itself that any particular diploma is such as to furnish a sufficient guarantee of the possession of the requisite medical knowledge and skill We understand that, in countries where there is some central authority corresponding to the General Medical Council, the Council is accustomed to consult that body for the purpose of satisfying itself that a particular diploma about which perhaps a question has been raised affords the guarantee required, but where such body does not exist, the Council must of course make its own inquiries We should point out that the General Medical Council in the United Kingdom does not itself confer medical degrees It keeps the medical register, that is to say, a register of medical practitioners who have passed a qualifying examination in medicine, surgery, and midwifery, held by Universities in the United Kingdom and certain other bodies, in which a standard of proficiency satisfactory to the Council has been attained, and the Council, though they do not themselves examine, are thus able in effect to secure that the qualifying examinations and the standard of proficiency are adequate

Withdrawal of recognition of Indian medical diplomas.

362 Until very recently there was no central body in India corresponding to the General Medical Council, and therefore no authority with power to secure and maintain a common standard for the medical qualifications evidenced by the diplomas recognized by the various provincial Medical Councils in India It appears that there was in consequence a considerable variation in the standards adopted by these bodies, and the Council some four years ago took the drastic step of refusing any longer to accord recognition to Indian medical diplomas, as the Indian Legislature had refused to provide the money for a system of inspection which would have been acceptable to the General Medical Council pending the establishment of a system of inspection by an All-India Medical Council It is perhaps not surprising that the action of the Council caused resentment and protest It was believed by many that political, or at least ulterior, motives lay behind it, *but no one who is aware of the integrity and* independence of the Council, and its complete dissociation from every kind of political influence, can doubt that it was inspired solely by a desire to promote the interests of medical education and to secure the highest standard of proficiency in those who claimed to be admitted to the United Kingdom register On the merits of the dispute we are not of course competent to pronounce, nor are we able to say whether the Council might have achieved their purpose in some way less likely to wound Indian susceptibility, but of the purity of its intentions we cannot entertain any doubt, and it is to be regretted that none of those affected thought fit to avail himself of the right of appeal to the Privy Council and to obtain a decision from a body whose impartiality could not be questioned

Act,

363 The controversy has had at any rate one satisfactory result for the Indian Legislature have now passed an Act known as the Indian Medical Council Act 1933 which sets up a Medical Council for the whole of British India with substantially the same functions as those of the General Medical Council in the United Kingdom This Act sets out in the First Schedule the medical qualifications granted by medical institutions in British India, which are to be recognised for the purposes of the Act and gives the Council power to secure by inspection and in the last resort by the withdrawal of recognition an adequate standard of proficiency In the Second Schedule are set out the medical qualifications granted by medical institutions outside British India which are to be recognized for the purposes of the Act and in this list are included the registrable qualifications granted by licensing bodies in the United Kingdom which admit to the United Kingdom medical register These are to continue unaltered for a period of four years but the Council are empowered to enter into negotiations with the authority in any country outside British India entrusted with the maintenance of a register of medical practitioners for the settlement of a scheme for the reciprocal recognition of medical qualifications The Governor General is to be informed of the decisions of the Council to recognise or refuse to recognise the medical qualifications proposed by the authority abroad for recognition in British India and he is to frame a new Schedule (to become effective four years after the commencement of the Act) which will comprise the medical qualifications thereafter to be recognised Provision is also made enabling the Governor General in Council after the expiration of four years to amend the Schedule and to add further qualifications or to recognise only qualifications granted before or after a specified date It will thus be seen that the Governor-General in Council would on the representations of the Indian Medical Council be free to withdraw at any time after the expiration of four years the recognition in British India secured to medical practitioners on the United Kingdom medical register though there is a saving for all medical qualifications granted previously

The Act a basis for satisfactory arrangements in the future.

364 We appreciate and sympathise with the efforts of the Indian medical profession to put its house in order and we hope that co-operation between the two Councils (for we are convinced that good will is not lacking on either side) will go far to ensure an amicable and agreed solution of the present difficulty We are of opinion that the Indian Medical Council Act with only slight modifications can be made the basis of a permanent and satisfactory arrangement The references in the Act to the Governor-General in Council will in any event require modification under the new Constitution and at first sight it would appear that it would be sufficient to substitute a reference to the Governor-General *i e* the Governor General advised by his Ministers since this is a matter falling within the ministerial sphere But we confess that we should find difficulty

in agreeing that the Governor-General is an appropriate authority for determining whether any particular qualification should be recognised, for this is not a matter of policy, but one which involves technical and professional considerations We think that the true solution is to be found in an adaptation of the provisions in the United Kingdom Act which we have mentioned above, whereby any refusal by the General Medical Council to recognise a medical diploma granted abroad may be made the subject of an appeal to the Privy Council; and we suggest that if after the expiration of four years the Indian Medical Council proposes to withhold recognition of any of the United Kingdom qualifications set out in the Second Schedule to the Indian Act, an appeal should lie to the Privy Council, whose decision should be final The Act of 1886 requires the Privy Council, before giving its decision on a refusal to recognise a diploma granted abroad, to communicate with the General Medical Council, and there should be a corresponding provision that in the converse case there should be communication with the Indian Medical Council, but we are disposed to think that the law should be amended so as to provide that in either case both Councils should be communicated with before the decision of the Privy Council is given We hope that before the four years have expired, as a result of joint action between the two Councils, the General Medical Council will have seen its way to restore its recognition of Indian diplomas, and that discussions may proceed between them free from political influence or bias and with the sole object of promoting the interests of medical education in both countries

The Indian Medical Service

365 There is one aspect of this question which seems to us to present special features It is not necessary to emphasise the importance of the Indian Medical Service from the military point of view, and in our opinion the members of the Service ought, by virtue of the commissions which they hold, to be deemed to possess all necessary statutory qualifications entitling them to practise The same principle should apply to members of the Royal Army Medical Corps and of the Royal Air Force Medical Service

Fundamental Rights

A declaration of fundamental rights impracticable

366 The question of so-called fundamental rights, which was much discussed at the three Round Table Conferences, was brought to our notice by the British-India Delegation, many members of which were anxious that the new Constitution should contain a declaration of rights of different kinds, for reassuring minorities, for asserting the equality of all persons before the law, and for other like purposes, and we have examined more than one list of such rights which have been compiled The Statutory Commission observe with reference to this subject —" We are aware that such provisions have been inserted in many Constitutions, notably in those of the European States formed after the war Experience however has not shown them to be of any great practical value Abstract declarations are useless, unless there exist the will

and the means to make them effective [1] With these observations we entirely agree and a cynic might indeed find plausible arguments in the history during the last ten years of more than one country for asserting that the most effective method of ensuring the destruction of a fundamental right is to include a declaration of its existence in a constitutional instrument. But there are also strong practical arguments against the proposal which may be put in the form of a dilemma for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind or its legal effect will be to impose an embarrassing restriction on the power of the Legislature and to create a grave risk that a large numb laws may be declared invalid by the Courts because incons with one or other of the rights so declared. An examinati the lists to which we have referred shows very clearly indeed that this risk would be far from negligible. There is this further objection that the States have made it abundantly clear that no declaration of fundamental rights is to apply in State territories and it would be altogether anomalous if such a declaration had legal force in part only of the area of the Federation There are however one or two legal principles which might we think be appropriately embodied in the Constitution and we direct attention to them in the paragraphs which follow There are others not strictly of a legal kind to which perhaps His Majesty will think fit to make reference in any Proclamation which He may be pleased to issue in connection with the establishment of the new order in India.

Eligibility for holding public office etc.

367 Among the proposals in the White Paper is one which would put it beyond the power of any Legislature in British India to make laws (with certain exceptions) subjecting any British subject to any disability or discrimination in respect of a variety of specified matters if based upon religion descent caste, colour or place of birth [2] This proposal seems to us too wide and we understand that His Majesty s Government have after consultation with the Government of India arrived at the same conclusion. We agree that some declaration of the general rights of British subjects in India is required but we think that it would be preferable to base it upon the existing section of the Government of India Act We think that this declaration should provide that no British subject Indian or otherwise domiciled in India shall be disabled from holding public office or from practising any trade profession or calling by reason only of his religion descent caste colour or place of birth and it should be extended as regards the holding of office under the Federal Government to subjects of Indian States

Punjab Land Alienation Act.

368 The proposal in the White Paper however contains a proviso which would in one respect still further limit the effect of this narrower declaration of rights namely that no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the

[1] Report Vol. II para. 36
[2] White Paper Proposal 122.

grants date from Moghul or Sikh times and have been confirmed by the British Government others have been granted by the British Government for services rendered. Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being The terms of these grants differ older grants are mostly perpetual modern grants are mostly for three or even two generations. But whatever their terms a grant of this kind is always held in virtue of a specific undertaking given by or on the authority of the British Government that subject in some cases to the due observance by the grantee of specified conditions the rights of himself and his successors will be respected either for all time or as the case may be for the duration of the grant A well known instance of such rights is to be found in those enjoyed by the present Talukdars of Oudh who owe their origin to the grant to their predecessors of sanads by Lord Canning the then Governor General conferring proprietary rights upon all those who engaged to pay the *jumma* which might then or might from time to time subsequently be fixed, subject to loyalty and good behaviour and the rights thus conferred were declared to be permanent hereditary and transferable

Prior consent of Governor General or Governor should be required to legislation affecting such grants.

371 It is not unnatural that the holders of privileges such as we have described should be apprehensive lest the grant of responsible government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration should result in a failure to observe the promises which have been extended by Governments in the past to themselves or their predecessors in interest Some of the claims to protection which have been urged upon us in this connection would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time however strong the justification for its modification might prove to be in the light of changed circumstances every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far reaching a limitation upon the natural consequences of the change to responsible government We recommend however that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor as the case may be to any proposal legislative or executive which would alter or prejudice the rights of the possessor of any privilege of the kind to which we have referred.

The Permanent Settlement.

372. We have considered whether similar provision should be made to protect the rights of Zamindars and others who are the successors in interest of those in whose favour the Permanent Settlement of Bengal Bihar and Orissa and parts of the United Provinces and Madras was made at the end of the 18th century Briefly the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars on the understanding that they

d and paid to Government the revenue assessed on that hich was fixed at rates declared at the time to be intended to tered in perpetuity. It is apparent that the position of ars under the Permanent Settlement is very different from the individual holders of grants or privileges of the kind we st described, for, while the privileges of the latter might, a protection such as we suggest, be swept away by a stroke n with little or no injury to any but the holder of the vested himself, the alteration of the character of the land revenue in Bengal, for instance, would involve directly or indi- e interests of vast numbers of the population, in addition of the comparatively small number of Zamindars proper, ht indeed produce an economic revolution of a most far- character. Consequently, no Ministry or Legislature in ould, in fact, embark upon, or at all events carry to a con- egislative proposals which would have such results, unless behind them an overwhelming volume of public support ot dispute the fact that the declarations as to the per- of the Settlement, contained in the Regulations under was enacted, could not have been departed from by the overnment so long as that Government was in effective f land revenue But we could not regard this fact as the conclusion that it must be placed beyond the legal ice of an Indian Ministry responsible to an Indian e, which is to be charged *inter alia* with the duty of g the land revenue system of the Province, to alter the s embodying the Permanent Settlement, which enact- te the promises of permanence which they contain, are bject (like any other Indian enactment) to repeal or Nevertheless, we feel that the Permanent Settlement matter for which, as the result of the introduction of Autonomy, His Majesty's Government can properly all responsibility We recommend therefore that the should be instructed to reserve for the signification of His pleasure any Bill passed by the Legislature which would character of the Permanent Settlement

The English language.

concluding this chapter of our Report, we take the y of mentioning a topic which can conveniently be dealt though it has no very direct connection with the question tion or of fundamental rights It has been urged on us sion should be made requiring the English language to be language of the Federation, or, more particularly, that ould receive legal status as the official language of the and of the superior Courts, and as one of the official of the Provincial Governments In our judgment, no ose would be served by a general declaration in the indicated, and any such declaration would at once give ctions of great difficulty and complexity in relation to Our recommendations set out in this chapter include

language amongst the grounds upon which, in certain cases discrimination is to be inadmissible and these recommendations will accordingly prevent any individual who falls within the scope of the protection of these provisions from being discriminated against on the ground that his mother tongue is English. Apart from this we recommend that the Letters Patent issued to the High Courts should prescribe English as the language of these Courts and we think that the Constitution Act might well provide as do the Statutory Rules made under the existing Government of India Act at the present moment that the business of all the Legislatures is to be conducted in English subject to appropriate provision ensuring the right of any member unacquainted with English to address the Legislature in the vernacular At the present moment the language of the Subordinate Courts is laid down by each Provincial Government under provisions in the Codes of Civil and Criminal Procedure We see no reason to suppose that the Provincial Governments will cease to exercise this power under the new Constitution or that they will exercise it in an unreasonable manner

(6) CONSTITUENT POWERS

Meaning of Constituent Powers

374. The White Paper proposes (and we entirely concur) that, whatever the powers of the Indian Legislatures may be in relation to Acts of Parliament in general, they shall not extend to the enactment of any law affecting the provisions of the Constitution Act, except in so far as that Act itself empowers them to do so [1] By "constituent powers," therefore, we mean powers conferred by the Constitution Act upon some authority other than Parliament to vary specified provisions of the Act, whether or not such variation is required by the Act to be subject to the approval of Parliament

Grant of Constituent Powers to Indian Legislatures not yet practicable

375 We are satisfied that, though there are various matters in the Constitution Act which after an interval of time, might in principle be left quite appropriately to modification by the Central or Provincial Legislatures, as the case may be, as subsequent experience may show to be desirable, it is not practical politics here and now to attempt to confer such powers upon them It would be necessary, not merely to decide what matters could thus be dealt with, but also to devise arrangements to ensure that the various interests affected by any proposed modification were given full opportunity to express their views, and that changes which they regarded as prejudicial to themselves could not be forced upon them by an inconsiderate majority With a Constitution necessarily so framed as to preserve so far as may be a nice balance between the conflicting interests of Federation, States and Provinces, of minority and majority, and, indeed, of minority and minority, and with so much that is unpredictable in the effects of the inter-play of these forces, it is plain that it would be a matter of extreme difficulty to devise arrangements likely to be acceptable to all those who might be affected, and it would probably be found that the balance could only be preserved, and existing statutory rights only guaranteed, by a number of restrictions and conditions upon the exercise of the constituent powers which would make them in practice unworkable But, whether or not this can reasonably be regarded as a defect in the Constitution Act, we do not think that the question is one of immediate importance, since we should have felt bound in any event to recommend that the main provisions of the Act should remain unaltered for an appreciable period, in order to ensure that the Constitution is not subjected at the outset to the disturbances which might follow upon hasty attempts to modify its details

Constitutional amendment otherwise than by Act of Parliament

376 At the same time we are satisfied that there are various matters which must be capable, from the beginning, of modification and adjustment by some means less cumbrous and dilatory than amending legislation in Parliament To meet this need, we recommend that the requisite powers for ensuring elasticity, where it is

[1] White Paper, Proposal 110

necessary should be placed by the Act in the hands of His Majesty s Government but subject nevertheless to the control of Parliament We may add that we could not in any case regard some of the provisions to which we think that this procedure should apply as appropriately entrusted to any authority in India for amendment or modification The White Paper proposes that the regulation of certain matters should be prescribed in detail by His Majesty in Council after the Constitution Act is passed and that any subsequent variations should be effected in the same manner Orders in Council are commonly made upon the advice of Ministers without the intervention of Parliament but there is also a well-established procedure for which precedents are to be found in many Acts of Parliament, whereby both Houses of Parliament are enabled to consider and to approve the drafts of any proposed Orders before they are finally submitted to His Majesty and in certain cases we think that this procedure would be appropriate for the Orders in Council now under consideration

Administrative matters.

377 The matters which under the White Paper [1] it is proposed to prescribe by Order in Council fall into two categories The first class comprises —

(*a*) the payments (other than salary proper which is to be fixed by the Act itself) to be made to the Governor-General and Governors on their own account and that of their personal staffs

(*b*) the salaries and conditions of service of the Governor General s Counsellors

(*c*) the salaries pensions leave and other allowances of the Judges of the Federal Court and of the High Courts

We see no reason why except in the case of (*c*) [2] Parliament should desire to concern itself directly with these matters the settlement of which is in the nature of an executive function.

Matters which should be under control of Parliament

378 But there are other matters to be prescribed[3] which are of an essentially different nature —

(*a*) the percentage of income tax which is to be assigned to the Provinces and the basis on which that assignment is to be made

(*b*) the sum to be retained at the outset by the Federation out of the proceeds of taxes on income which would otherwise be assigned to the Provinces

(*c*) the basis on which the States are to contribute to federal revenues during the operation of federal surcharge on income tax

[1] White Paper Proposals 10 12, 162, 171
[2] *Supra* para. 328.
[3] White Paper Proposals 37 87 106 139 141 144

(*d*) the subventions to be made from federal revenues to certain deficit Provinces;

(*e*) the qualifications of electors to the Provincial and Federal Legislatures; the delimitation of constituencies; the method of election of representatives of communal and other interests; the filling of casual vacancies and other ancillary matters, and

(*f*) the specification of the areas to be treated as Excluded and Partially Excluded, respectively.

Some of these matters can scarcely be determined until after the Constitution Act is on the statute book, and to set out the others in the Act itself would add greatly to its length and complexity. We agree, therefore, that the method of procedure by Order in Council, with a power to modify subsequently by the same method, is both necessary and appropriate. We think that the same method should be applied to the revision or adjustment of provincial boundaries.

Procedure suggested

379. In the determination of all matters in this second category, we think it essential that Parliament should have a voice, and we recommend that a provision should be included in the Constitution Act requiring every Order in Council relating to them to be laid in draft before both Houses of Parliament for approval by affirmative Resolution. A procedure of this kind would, we think, enable Parliament to retain effective control over these subsidiary matters.

Resolutions for constitutional amendment by Indian Legislatures

380. We have given reasons for our conviction that a specific grant of constituent powers to authorities in India is not at the moment a practicable proposition. We think, however, that a plan whereby the new Legislatures can be associated with the modification hereafter of the provisions of the Act, or of any Order in Council, relating to the composition and the size of the Legislatures or the qualifications of electors, is very desirable. It is, of course, competent for any Legislature in India to pass a Resolution advocating a constitutional change, with a request that its Resolution should be forwarded to His Majesty's Government for consideration, and for this no provision in the Constitution Act would be required. But in our view it ought hereafter to be possible, under specified conditions, for a responsible Government in India, with the approval of its Legislature, to be assured that any such Resolution is actually taken into consideration by His Majesty's Government and their decision upon it formally recorded. We recommend, therefore, that, where an Indian Legislature has passed a Resolution of this kind and has presented an Address to the Governor-General or Governor, as the case may be, praying that His Majesty may be pleased to communicate it to Parliament, the Resolution shall be laid before both Houses of Parliament not later than six months after its receipt, with a statement of the action which His Majesty's Government propose to take upon it.

Resolutions should be subject to certain conditions

381 But we think that this procedure should be subject to the following conditions —

(*a*) that the Resolution should be confined in scope to matters concerning the size and composition of and the franchise for the Legislatures

(*b*) that the Federal Legislature should have no power to propose an alteration in the size or composition of either Chamber which would involve a variation of the proportions of the seats allotted to the States and the Provinces respectively or of the relative size of the two Houses

(*c*) that the procedure should not come into force until the expiry of ten years—in the case of a Provincial Legislature from the inauguration of Provincial Autonomy and in the case of the Federal Legislature from the inauguration of the Federation except that any Provincial Legislature should have power to propose the removal of the application requirement and the lowering of the educational standard to literacy in the case of women voters[1] at any time after the first election in the Province under the new Constitution

(*d*) that as a guide to His Majesty s Government and Parliament in this matter the Governor-General or Governor as the case may be should be required in forwarding a Resolution to state his own views on the question of its effect upon the interests of any minority or minorities and finally

(*e*) that the Resolution should have been proposed on the motion and on the responsibility of the Federal or Provincial Ministers as the case may be

[1] *Supra*, para. 136

(7) The Secretary of State and the Council of India

The Secretary of State in Council

382. The Secretary of State in Council is by statute a body corporate, and the powers exercisable by the corporation thus brought into existence are singular and indeed in some respects anomalous, because inconsistent with the doctrine of ministerial responsibility. The Council itself consists of the Secretary of State and not less than eight nor more than twelve members, of whom at least one-half must have served or resided in India for at least ten years. The members other than the Secretary of State hold office for a term of five years, but, like His Majesty's Judges and the Comptroller and Auditor-General, may be removed from office on an Address presented to the Crown by both Houses of Parliament.

Powers of the Council of India

383. The Secretary of State in Council has power to dispose of real or personal estate vested in the Crown, to raise money by way of mortgage, and to make, vary and discharge contracts; and at the present time in any suit, whether in India or elsewhere, to which the Government of India or any Local Government or any official employed by them is a party, the proceedings must be in the name of the Secretary of State in Council. The Secretary of State in Council is also the only authority for raising loans in this country for the purpose of the Government of India. The Council of India, under the direction of the Secretary of State, is required to "conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India." At meetings of the Council, questions are decided by a majority vote, but the Secretary of State may, if he thinks fit, over-rule the Council, except in certain matters for the decision of which a majority of the Council present and voting is required. These matters are: (1) grants or appropriations of any part of the revenues of India; (2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise; (3) the making of contracts, including instruments of contract of civil offices in India; (4) the application to the Government of India and the Local Governments of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads; (5) the passing of any order affecting the salaries of members of the Governor-General's Council; and (6) the making of rules regulating various matters connected with the Indian Public Services.

Powers in relation to finance

384. The Bill which became the Act of 1858, under which the Crown and Parliament first assumed complete responsibility for the government of India, originally provided that the decision of the Secretary of State should be final in all matters which had given rise to a difference of opinion in the Council of India; but the House of Commons insisted upon limiting the authority of the Secretary of

State over the expenditure of Indian revenues firstly by requiring the concurrence of the Council of India to grants or appropriations of any part of those revenues and secondly *by requiring the consent* of both Houses of Parliament to the defraying from Indian revenues of the cost of any military operation beyond the external frontiers of India. The purpose of these amendments appears to have been the anxiety of Parliament not to leave to a Minister the unfettered disposal of the whole of the revenues of India and of the large patronage which would thereby be placed in his hands and to afford safeguards against the expenditure of Indian revenues on purposes other than those arising strictly out of the necessities of Indian government The result has been that His Majesty's Government have never had, and have not now the power to compel contributions from Indian revenues for imperial purposes if a majority of the Council of India refuse to sanction the proposal *and there is reason to believe that the powers of the Council in* this respect have, on more than one occasion in the past enabled a Secretary of State successfully to resist pressure from his colleagues in the Government to authorize expenditure from Indian revenues which appeared to him prejudicial to the interests of the Indian taxpayer

Continuance of Council of India not necessary under responsible government.

385 We cannot doubt that under a system of responsible government in India the Secretary of State in Council could not continue on the present basis. It will no longer be necessary with the transfer of responsibility for finance to Indian Ministers that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters nor ought the authority of the Secretary of State to extend to estimates submitted to an Indian Legislature on the advice of Indian Ministers But in our opinion it is still desirable that the Secretary of State should have a small body of Advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department.

An advisory body proposed.

386 We concur therefore in the proposal in the White Paper that the Secretary of State should be empowered to appoint not less than three nor more than six persons for the purpose of advising him of whom two at least must have held office for at least ten years under the Crown in India [1] The Secretary of State will be free to seek their advice either individually or collectively on any matter as he may think fit but will not be bound to do so save in one respect only It is proposed that so long as he remains the authority charged with the control of any members of the Public Services in India he must lay before his Advisers and obtain the concurrence of a majority of them to the draft of any rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service

[1] *White Paper Proposal 176*

and any order which he proposes to make upon an appeal to him from any member of the Service, which he controls These proposals in effect preserve to the Services the safeguards which they at present enjoy through the Council of India, and we have only three suggestions to make with regard to them We think in the first place that the service of the Advisers who are required to have held office for at least ten years under the Crown in India should not have terminated more than two years before their appointment, secondly, it seems to us reasonable in the circumstances that at least half of the Advisers should have the Service qualification, and, thirdly, in order to secure that, in matters where the concurrence of the majority of his Advisers will be required, the Secretary of State shall be an effective participant in their deliberations, it seems desirable to us that the Secretary of State shall, in case of equality of votes, have a second or casting vote

Property, suits, etc

387 The disappearance of the Secretary of State in Council as a statutory corporation will necessitate provisions in the Constitution Act transferring to the appropriate authority, the Federal Government, Provincial Government, or the Railway Authority, as the case may be, the rights, liabilities and obligations incurred by the Secretary of State in Council by contract or otherwise before the establishment of the new Constitution, any existing rights of suit and arbitration in this country being preserved against the Secretary of State as the successor to the Secretary of State in Council in respect of these liabilities It seems to us that provision will also have to be made for giving a juristic personality to the Federal and Provincial Governments for the purpose of enabling them in future to sue and be sued in their own names

India Office staff

388 The Statutory Commission expressed the opinion that, if material reductions in the India Office staff should result from their recommendations, the question should be considered whether special compensation ought not to be granted to civil servants employed in the India Office for whom equivalent employment cannot be provided elsewhere, since the ordinary rules regulating the compensation of retrenched civil servants did not seem appropriate in the case of officers whose careers might be terminated as a result of changes in high policy [1] We are informed that the Secretary of State is unable at the present time to make any forecast of the volume of business which the India Office will have to transact under the new order, but that the possibility of retrenchment sooner or later is very real and involves an extraordinary risk, which no one on the India Office staff could have foreseen at the date of his entry into the Civil Service and which it is not right to ask him to assume now without any prospect of compensation, if he should be affected In these circumstances we are of opinion that the power of the Secretary of State to grant compensation from Indian revenues to members of the

[1] Report, Vol II, para 360

Indian Public Services should extend to any members of the India Office staff who may be retrenched in consequence of the constitutional changes and we intend that the expression India Office Staff in this connection should be interpreted as including members of the Audit Office and the former members of the India Office now serving in the Office of the High Commissioner for India.

Expenses of India Office.

389 We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India but that an annual grant in aid of £150 000 is made by the Treasury This is a matter which ought we think to be considered in connection with future changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service Estimates of the United Kingdom but that Indian revenues should contribute a grant in aid in view of the functions which the Secretary of State and his Department will continue to perform on behalf of the Governments in India

(8) The Reserve Bank

Indian Reserve Bank Act, 1934.

390 We have in an earlier passage[1] referred to the necessity of leaving no room for doubt as to the ability of India to maintain her financial stability and credit at home and abroad This is naturally of great importance in the sphere of currency and exchange, which, besides their pervading influence on the whole economic structure of the country, may have far-reaching effect upon government finances. At present currency and exchange are the direct concern of the Government of India, but for some time it has been felt to be desirable that they should be entrusted to a central bank, which would also control the credit mechanism of the country The economic justification for such a change becomes reinforced when constitutional changes are being made in the form of government at the Centre We agree with the view which, we understand, has been taken throughout by His Majesty's Government that a Reserve Bank on a sure foundation and free from political influence should already have been established and in successful operation before the constitutional changes at the Centre take place. The Indian Legislature has recently passed a Reserve Bank of India Act, and we are assured that this measure should provide the Bank with a sound constitution We understand that it is expected that, in the absence of unforeseen developments, it will be possible for the Bank to be constituted and to start its operations during the course of next year Reliance on the Bank to play its due part in safeguarding India's financial stability and credit clearly demands that at all events its essential features should be protected against amendments of the law which would destroy their effect for the purpose in view

Certain amendments of Act should require prior sanction of Governor-General

391 The White Paper proposals require the prior consent of the Governor-General at his discretion to the introduction of legislation affecting that portion of the Reserve Bank Act which regulates the powers and duties of the Bank in relation to the management of currency and exchange[2], that is to say, they do not cover the constitution of the Bank itself We feel however that so narrow a definition leaves open the possibility of amendment to other portions of the Act which might prejudice or even destroy some of the features of the system which we would regard as essential to its proper functioning It seems clear that the Act must be considered as a whole and we recommend that any amendment of the Reserve Bank Act, or any legislation affecting the constitution and functions of the Bank, or of the coinage and currency of the Federation, should require the prior sanction of the Governor-General in his discretion Certain of the functions vested by the Reserve Bank Act in the Governor-General in Council (of which an important example is the appointment of the Governor, Deputy Governor and four nominated Directors of the Bank) will in future require to be vested in the Governor-General in his discretion, and appropriate provision in the Constitution Act will be needed to secure this.

[1] *Supra*, para, 170

[2] White Paper, Proposal 119

(9) Future Administration of Indian Railways

ailway policy and Statutory ailway uthority

392 It is stated in the White Paper[1] that His Majesty's Government consider it essential that while the Federal Government and Legislature will necessarily exercise a general control over railway policy the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Railway Authority so composed and with such powers as to ensure that it is in a position to perform its functions upon business principles without being subject to political interference

eport of ommittee n June, 933.

393 Questions of principle and detail arising out of the proposal were considered by a very representative Committee which sat in London in June 1933 The Report of the Committee (described as Sketch Proposals for the Future Administration of Indian Railways) has been made available to us and was published in our Records on 27th July 1933 and for convenience of reference we reproduce it as an Appendix (IV) We consider that the scheme outlined by the Committee provides a suitable basis for the administration of the Indian Railways, subject however to two conditions to which we attach importance viz. that not less than three of the seven members of the proposed Authority should be appointed by the Governor-General in his discretion and that the Authority should not be constituted on a communal basis One point of importance does not seem to have been made sufficiently clear by the Report of the Committee The powers which the Governor General will possess of taking action in virtue of his special responsibilities (including of course that relating to any matter which affects the Reserved Departments) must extend to the giving of directions to the Railway Authority Also his right in the event of a breakdown of the Constitution to assume to himself the powers vested in any Federal Authority must extend to the powers vested in the Railway Authority We have considered the question whether the statutory basis for the new Railway Authority should be provided by the Constitution Act or by Indian legislation. There would be obvious advantages in having in being at the earliest possible date a statutory Railway Authority conforming as closely as possible both in composition and powers with the body which will function after the establishment of the Federation and we see no objection to the necessary steps being taken to this end in India But even so we are clearly of opinion that the Constitution Act must lay down the governing principles upon which this important piece of administrative machinery should be based and consequently that the provisions of the first (and any subsequent) Indian enactment on this matter should conform with those principles.

[1] White Paper Introd para. 74

394 In our view it will be necessary to regulate under the Constitution Act the following matters .—

Certain matters should be regulated by Constitution Act

(a) The extent of the control of the Federal Government and the Indian Legislature over the Railway Authority (paras 1 and 2) [1] It will also be necessary under this head to make it clear that the Governor-General's special responsibilities extend to the operations of the Railway Authority

(b) The principles which should guide the Authority (para 5)

(c) The method of appointing members (para 2, subject to our observations above)

(d) The conditions for the separation of railway finances from general finances (paras 5–7)

(e) The continuance in full force of the contracts at present existing with the Indian railway companies and the security of the payments periodically due to them in respect of guaranteed interest, share of earnings and surplus profits, as well as their right in accordance with their contracts to have access to the Secretary of State in regard to disputed points and, if they so desire, to proceed to arbitration (para 4)

(f) Machinery for arbitration proceedings on disputed issues in the railway field (para 12) It is a matter for consideration whether a tribunal of a permanent character rather than a tribunal *ad hoc*, as suggested by the Committee, would not be more suitable for this purpose

(g) Requirement of prior consent of the Governor-General at his discretion to legislation affecting the constitution or powers of the Railway Authority

395 We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, its right to do so should be subject to appeal by the Railway Authority to the same tribunal

Disputes between Railway Authority and Indian States Railways

[1] References are to paragraphs of the Sketch Proposals (Appendix (IV) p 232)

APPENDIX (IV)

SKETCH PROPOSALS FOR THE FUTURE ADMINISTRATION OF INDIAN RAILWAYS FORMULATED BY A COMMITTEE APPOINTED BY THE SECRETARY OF STATE IN JUNE, 1933 The following composed the Committee —

Sir Campbell Rhodes C.B.E Mr N N Anklesaria Mr Muhammad Padshah, Mr Muhammad Yamin Khan C I E Sir Muhammad Yakub Diwan Bahadur Ramaswami Mudaliar Mr C. C S Ranga Iyer Dr Zia ud-din Ahmad C.I E Sir Ernest Bell C I.E. Sir Henry Burt, K.C I E C B E, Sir Hubert Carr Brigadier General F D Hammond C B E. D S O Sir Akbar Hydari Mr N M. Joshi Sir Louis Kershaw K.C.S I, C.I.E., Sir Reginald Mant K C S I K.C.I.E. Sir Manubhai Mehta, C.S.I Sir James Milne C.S.I Mr R. Mowbray Sir Alan Parsons C.I.E. Sir Phiroze Sethna, O B.E Sir Thomas Smith.

1 Subject to the control of policy by the Federal Government and the Legislature a Railway Authority will be established and will be entrusted with the administration of railways in India (as described in paragraph 4) and will exercise its powers through an executive constituted as described in paragraph 3

2. The Railway Authority will consist of seven members. The Committee is divided on the question whether (a) three will be appointed by the Governor-General in his discretion and four by the Governor-General on the advice of the Federal Government or (b) all will be appointed by the Governor-General on the advice of the Federal Government Those members of the Committee who are members of the Central Legislature with the exception of Mr Anklesaria, support the latter alternative All the Hindu and Muslim members of the Central Legislature on the Committee agree that out of the seven seats on the Railway Authority two should be reserved for the Muslim community and one for the European community Sir Phiroze Sethna Mr Anklesaria Sir Manubhai Mehta and the European members of the Committee while they would welcome an authority representative of all interests and all communities so far as is compatible with efficiency do not consider that any special provision should be made in the statute for the establishment of the Railway Authority on a communal basis The seven members so appointed must be possessed of special knowledge[1] of commerce industry agriculture or finance or have had extensive administrative experience The President[2] of the Authority who shall have the right of access to the Governor General will be appointed from the members by the Governor-General in his discretion

The Federal Minister responsible for Transport and Communications may at any time convene a special meeting of the Railway Authority for the purpose of discussing matters of policy or questions of public interest At such meetings the Federal Minister will preside The Federal Minister may by order require or authorise the Railway Authority to give effect to decisions of the Federal Government and the Legislature on matters of policy and it shall be obligatory on the Railway Authority to give effect to such decisions

[1] Mr Joshi would add knowledge of public affairs

Mr Joshi considers that two seats on the Railway Authority should be specially reserved for representatives of Labour and the travelling public.

Mr Joshi and Dr Ahmad consider that if the Authority is to consist of a whole-time Chairman and part time members the number should be increased.

Mr Joshi and Mr Anklesaria consider that special representation should be given to agriculturalists on the Railway Authority

[2] Mr Joshi and Mr Ranga Iyer consider that the appointment of President should be made on the advice of the Federal Government.

No Minister or member of the Federal Legislature or any other Legislature in India will be eligible to hold office as a member of the Authority till one[1] year has elapsed since he surrendered his office or seat, nor will any person be appointed as a member of the Authority who has been a servant of the Crown in India, a railway official in India, or has personally held railway contracts, or has been concerned in the management of companies holding such contracts, within one year of his relinquishment of office or of the termination of the contract as the case may be The Federal Minister responsible for Transport and Communications may, if he sees fit, attend the ordinary meetings of the Authority or be represented thereat, but in neither case will there be the right to vote The members of the Authority will hold office for five years, but will be eligible for re-appointment for a further term of the same length or for a shorter term (In the case of the first appointments, three will be for three years only, but these members will be eligible for re-appointment for a further term of three or five years)

Any member of the Authority may be removed from office by the Governor-General in his discretion if, in his opinion, after consultation with the Federal Government, there is sufficient cause for such action

Members shall be appointed to the Railway Authority who are prepared to give their services to such an extent as may be required for the proper performance of their duties as laid down in the Statute[2] Their emoluments shall be such as to secure suitable men who will be prepared to devote sufficient time for the proper discharge of their duties and responsibilities, and will be fixed by the Governor-General in his discretion after consultation[3] with the Federal Government, the emoluments of the members of the first Railway Authority being fixed in the Statute

3 At the head of the railway executive there will be a Chief Commissioner, who must possess expert knowledge of railway working, and will be appointed by the Railway Authority subject to the confirmation of the Governor-General[4] A Financial Commissioner will be appointed by the Governor-General on the advice of the Federal Government He must possess extensive financial experience and have served for not less than 10 years under the Crown or have shown outstanding capacity in the conduct of the financial affairs of commercial or railway undertakings The Railway Authority, on the recommendation of the Chief Commissioner, may appoint additional Commissioners who must be chosen for their knowledge of railway working Except in matters relating to Finance the Chief Commissioner shall have power to overrule his colleagues The Chief Commissioner will carry out the duties from time to time delegated to him by the Railway Authority and may delegate such powers to his subordinate officers as may be approved by the Railway Authority

4 The Railway Authority will be responsible for the proper maintenance and efficient operation of the railways vested in the Crown for the purposes of administration (including those worked by Companies), all of which will remain vested in the Crown for the purposes of the Federal Government The Railway Authority will also exercise the control over other railways in British India at present exercised by or on behalf of Government Provision will be made for safeguarding the existing rights of Companies working

[1] Mr Joshi and Mr Yamin Khan hold the view that in regard to the membership of a Legislature the year's disqualification should not apply but that any member of a Legislature appointed to the Railway Authority will *ipso facto* vacate his seat

[2] Mr Ranga Iyer, Mr Padshah, Mr Joshi, Dr Ahmad and Mr Yamin Khan are of opinion that the members should be "whole time," while the other members of the Committee consider that the Committee's recommendation does not exclude the appointment of whole-time members, should experience prove this to be necessary

[3] Mr Joshi and Mr Ranga Iyer hold that "in his discretion after consultation with" should read "on the advice of"

[4] Mr Joshi would add "and the Federal Government"

under contracts with the Secretary of State in Council and it will be the duty of the Railway Authority to refer to the Secretary of State any matters in dispute with the Companies which, under the terms of those contracts are subject to the decision of the Secretary of State in Council or which may be referred to arbitration. It will be obligatory on the Railway Authority and the Federal Government to give effect to the decision of the Secretary of State or the award of an arbitrator

5. In exercising the control vested in it, the Railway Authority will be guided by business principles, due regard being paid to the interests of agriculture industry and the general public and to Defence requirements After meeting from receipts the necessary working expenses (including provision for maintenance, renewals depreciation, bonus and interest on Provident Funds interest on capital and other fixed charges payments to Companies and Indian States under contracts or agreements) the surplus will be disposed of in such manner as may be determined from time to time by the Federal Government under a scheme of apportionment running for a period of not less than five years. In the event of a dispute as to the adequacy or otherwise of the allowance to be made in respect of renewals and depreciations the Auditor-General shall be the deciding authority Pending any new scheme of apportionment the disposal of any surplus will be governed by the arrangements in force at the time the Authority is established.

6. The Railway depreciation, reserve and other funds should be utilised solely for railway purposes and be treated as far as possible as the property of the Railway Authority The investment of such funds and the realisation of such investments by the Railway Authority shall be subject to such conditions as the Federal Government may prescribe. A Committee might be convened in India to advise what those conditions should be

7 Revenue estimates will be submitted annually to the Federal Government which will in turn submit them to the Federal Legislature but these estimates will not be subject to vote. If the revenue estimates disclose the need for a contribution from general revenues a vote of the Legislature will, of course be required. The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature. The Federal Government may however empower the Railway Authority to incur capital expenditure subject to conditions to be prescribed

8. The Railway Authority will be empowered subject to the powers of the Governor-General in the exercise of his special responsibilities and subject to the safeguarding of the rights of all officers in the service at the time of the establishment of the Railway Authority to regulate by rules or by general or special order the classification of posts in the railway services on State-worked lines in British India, and the methods of recruitment, qualifications for appointment to the service conditions of service pay and allowances Provident Fund benefits gratuities discipline and conduct of those services to make such delegations as it thinks fit, in regard to appointments and promotions, to authorities subordinate to it and to create such new appointments in the State Railway Services in British India as it may deem necessary or to make to authorities subordinate to it such delegations as it thinks fit in regard to the creation of new appointments. In its recruitment to the railway services the Railway Authority shall be required to give effect to any instructions that may be laid down to secure the representation of the various communities in India. In regard to the framing of rules to regulate the recruitment of the Superior Railway Services the Public Service Commission[1] shall be consulted Any powers in regard to matters dealt

[1] Mr Joshi and Mr Padshah consider that the Public Service Commission should be consulted in regard to the recruitment of both the Superior and Subordinate Services to the extent practicable

Sir Muhammad Yakub considers that the Public Service Commission should be utilised in making appointments as far as practicable.

with in this paragraph at present exercised by the Government of India over Company-managed railways shall in future be exercised by the Railway Authority

9. The Railway Authority will at all times furnish the Federal Government with such information as that Government may desire, and will publish an Annual Report and Annual Accounts The Accounts of the State-owned lines in British India will be certified by or on behalf of the Auditor-General

10 Should any question arise involving a conflict of interest between the various authorities in British India responsible for railways, waterways and roads as competitive means of transport, a Commission will be appointed by the Governor-General to ascertain the views of all the interests concerned and to report, with recommendations, to the Federal Government, whose decision shall be final The Commission shall consist of one independent expert of the highest standing and experience in transport matters, with whom will be associated, at the discretion of the Governor-General, two or more assessors

11 The Federal Government shall lay down regulations for safety on all the Indian railways and one of the Departments of the Federal Government, other than that responsible for Transport and Communications, shall be responsible for the enforcement of such regulations, subject, in the case of the Indian States, to the provisions of their respective Instruments of Accession

In regard to the railways referred to in paragraph 4,[1] maxima and minima rates and fares shall be fixed by the Railway Authority subject to the control of the Federal Government Any individual or organisation having a complaint against a railway administration under the control of the Railway Authority in respect of any of the matters which may, at present, be referred by the Railway Department to the Railway Rates Advisory Committee, may have the matter referred, under such conditions as the Federal Government may prescribe, to an Advisory Committee to be appointed by the Federal Government Before the Federal Government passes any order on a recommendation of the Advisory Committee it shall consult the Railway Authority

12 [2] Provision should be made for the reference, at the request of either the Railway Authority or the Administration of a railway owned by an Indian State, of disputes in certain matters such as the construction of new lines, the routing and interchange of traffic and the fixation of rates, to arbitration by a tribunal consisting of one nominee of each party and a chairman approved by both parties The decision of the committee should be final and binding on both parties Should the parties be unable to agree on the nomination of a chairman, he shall be nominated by the Governor-General in his discretion

The arrangements should be such as not to prejudice the position of the Federal Court as the interpreter of the Constitution and Constitutional documents

[1] Mr Mudaliar and Mr Joshi hold that the restriction under this clause to railways in British India conflicts with the provisions contained in the White Paper on the subject

Mr Ranga Iyer considers that the present powers exercised by the Government of India over all railways in Indian States should be exercised by the Railway Authority under the Federal Government

It was represented on behalf of the Indian States that separate arrangements would be required for railways owned by Indian States, and accordingly no provision has been made for such railways in the scheme except to some extent under safety (paragraph 11, sub-paragraph 1) and again under arbitration (paragraph 12)

[2] Mr Mudaliar and Mr Joshi dissent from the proposals in this clause as antagonistic to the proposals in the White Paper

(10) AUDIT AND AUDITOR-GENERAL

396 At present Audit in India both Central and Provincial is carried out by a staff under the Auditor General He is appointed by the Secretary of State in Council who also frames rules defining his powers and duties. In India Accounts and Audit are carried out by a combined staff so that the Auditor-General has functions in relation to Accounts as well as to Audit An experiment was tried in recent years in one Province of separating Accounts from Audit but was abandoned on the ground of expense There is at present no constitutional provision requiring the report of the Auditor General to be laid before the Legislature in India though this is done Audit of the Accounts of the Secretary of State is carried out by the Auditor of Indian Home Accounts who in accordance with Section 27 (1) Government of India Act, is appointed by the Crown by warrant countersigned by the Chancellor of the Exchequer His report is by statute presented to Parliament. It has also been found convenient to use the services of the Home Auditor to audit expenditure by the High Commissioner

The position and functions of the Auditor-General and the Home Auditor have been fully described by the Statutory Commission.[1]

397 When under the future Constitution the revenues of India are vested in the Federal and Provincial Governments and no longer in the Secretary of State in Council as at present it will clearly be necessary to provide that the Auditor-General in India shall report to those Governments and to the Legislatures in India instead of to the Secretary of State in Council. It is desirable both, on grounds of economy and for other reasons that the present centralised system of Audit and Accounts should be maintained, and it is to be hoped that the Provinces will realise the advantages of such a course Nevertheless it would be difficult to withhold from an autonomous Province the power of taking over its own Audit and Accounts if it desires to do so and we think that the Constitution must allow a Province to take this step subject to the following conditions. Long notice should be given of the change a Provincial Chief Auditor should be appointed whose position would be no less independent of the Executive than that of the Auditor-General a general form of accounts framed on the common basis for all the Provinces should continue to be available for such purposes as the consideration by the Federal Government of applications for loans from Provincial Governments or proposals for the assignment of revenues to Units of the kind mentioned in our earlier section on Federal Finance[2]

[1] Report, Vol. I, para. 432
[2] *Supra*, paras. 243–266.

398. As regards payments made by the Secretary of State in this country out of Indian revenues, these will in future be mainly on behalf of the Central Government, especially in relation to Defence Constitutionally, they will not in general differ from those made by the High Commissioner, except that they will more often relate to Reserved Departments than will be the case with expenditure by the High Commissioner It appears desirable that the Audit of these payments should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature

Audit o Home Accour

399 The White Paper contains no proposals relating to the Auditor-General or the Home Auditor, although it recognises that the necessary provision would have to be made [1] Our recommendations on this subject are as follows —

Recom menda tions

Auditor-General in India

(i) The Auditor-General in India should be appointed by the Crown, and his tenure should be similar to that of a High Court Judge, that is, during good behaviour, subject to an age limit, and he should be removable only by His Majesty in Council He should not be eligible for further office under the Crown in India His salary and general conditions of service should be prescribed by Order in Council, and his salary should not be votable

(ii) His duties and powers should be prescribed in the first instance by Order in Council, but the Federal Legislature should have power to amend and supplement these provisions, subject to the prior assent of the Governor-General in his discretion to the introduction of the legislation

(iii) The cadre of the Audit and Accounts Department should be fixed by the Federal Government Salaries should be votable, except in cases where individual salaries are already non-votable under other provisions of the Act.

(iv) Central Audit and Accounts should apply as at present to the Provinces for a period of at least five years; but Provinces should be empowered to take over their own Accounts, or Audit as well as Accounts, on giving three years' notice, the earliest date for such notice being two years after the establishment of Provincial Autonomy The Constitution Act should provide that if a Province elects to take over its own Audit, the Chief Auditor of the Province shall be appointed by the Crown with tenure and conditions of service prescribed in the same way as those of the Auditor-General

(v) The Report of the Auditor-General on the Federal Accounts should be submitted to the Governor-General, who

[1] White Paper, Introd, para. 76

would be required to lay it before the Federal Legislature His report on the Provincial Accounts (or the Report of the Provincial Chief Auditor if the Province had taken over Audit) should be submitted to the Governor who would be required to lay it before the Provincial Legislature.

(vi) Whether a Province has taken over Accounts or Audit or not it is essential that there should be established a uniform general form of Accounts for the Federation and for all British India Provinces Apart from this requirement a Province which had taken over Accounts or Audit should have the same powers *mutatis mutandis* as the Federal Government in relation to the duties and functions of the Auditor-General and his staff

Auditor of Indian Home Accounts

(i) Expenditure from Indian Revenues Federal or Provincial incurred in the United Kingdom whether the disbursements are made in the High Commissioner s Office or in the Office of the Secretary of State should be audited on behalf of the Auditor-General in India by an Auditor of Indian Home Accounts. His report should be sent to the Auditor-General for incorporation in the Auditor-General s own report for presentation to the Indian Legislatures In the event of a Province having its own Chief Auditor the Home Auditor would report to him in relation to expenditure relating to that Province

(ii) The Auditor of Indian Home Accounts should be under the general superintendence of the Auditor-General and subject to the general provisions mentioned above with regard to powers and duties. The Home Auditor should be appointed by the Governor General in his discretion His salary which should be non votable and his conditions of service except that his tenure of office and the procedure for removing him would be the same as in the case of the Auditor-General (though the age limit might differ) would be determined by the Governor General

(iii) As regards the staff of the Home Auditor cadre and salaries should be fixed by the Governor-General in his discretion Salaries should be votable unless in any individual case non votable under any other provisions of the Act. The Home Auditor himself should appoint and remove members of his staff. Rights of existing members of the staff of the Home Auditor including non votability of salaries should be protected.

Advocate-General holding office during his pleasure and should contain an appropriate definition of the functions of the office in the sense in which we have described them above.

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402. We understand that the Governments of the Provinces to which the office of Advocate-General is not at present attached have selected usually to rely for their legal advice either upon an officer from the cadre of District Judges who fills the post of Legal Remembrancer or upon the member of the legal profession appointed in each District to act as Government Pleader and Public Prosecutor. Our proposal for the creation of the office of Advocate-General in every Province will not of course affect the necessity for retaining the existing appointments of Government Pleader and Public Prosecutor nor do we contemplate that an Advocate-General would be in administrative control of these functionaries. And although our recommendations are based on the assumption that the Provincial Government will seek the opinion of the Advocate-General on any legal question of importance on which advice is needed, there will still arise in day to day administration numerous matters of less importance which raise legal questions for dealing with which the services of a Legal Remembrancer will we have no doubt continue to be required indeed we understand that such an officer is found necessary in the three Provinces which at present have an Advocate-General

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403 The historical association with the Government of India of the High Court of Judicature at Calcutta (which if our recommendations are accepted will now be terminated thus placing the High Court in the same relations with the Provincial Government as in the case of all other High Courts) accounts for the fact that the Advocate-General of Bengal acts as a Law Officer not only to the Bengal Government, but also to the Government of India. We think that there can be no justification for continuing this anomalous arrangement which became still more anomalous when Calcutta the permanent home of the Advocate-General ceased to be the headquarters of the Government of India. But it will be in our opinion of the first importance that the Federal Government should have at its disposal the services of an Advocate-General of its own and this need will be the more marked with the establishment of the Federal Court before which the Federal Government will require to be represented by an Advocate of standing and repute Here also we think it essential that the Advocate-General should hold his office on a settled tenure and should have no political associations with the Federal Ministry and provision for his appointment (which would in this case also be made by the Governor General acting in his discretion) and functions should be on the same lines as we have indicated in the case of the Provincial Advocates-General.

(12) The High Commissioner for India

The High Commissioner

404. There has been a High Commissioner for India in London since 1920. Orders in Council framed under Section 29A of the Government of India Act make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India Office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject.

Appointment should be made by Governor-General in his discretion

405. As the High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government, and as in any case he will be acting under the orders of the Governor-General in matters arising out of the Reserved Departments, it seems to us inappropriate that the appointment should be made by the Governor-General acting solely on the advice of Federal Ministers. We recommend accordingly that the appointment of High Commissioner should be made by the Governor-General in his discretion after consultation with his Ministers. It may be that some of the States which accede to the Federation would also find it useful to employ the agency of the High Commissioner for some purposes, and we consider that it should be open to them to do so.

Duties of High Commissioner

406. It will no doubt be necessary for the Constitution Act to make appropriate provisions on various matters connected with the High Commissioner, such as the making of contracts and the safeguarding of existing rights of members of his staff who were originally transferred; and it may well be that examination will show that it is the High Commissioner who will be the appropriate authority to assume the liability to be sued in this country in respect of obligations of a Government in India and that provision to that effect should be made in the Constitution Act.

(13) Transitory Provisions

Transitory provisions necessary if Provincial Autonomy precedes Federation.

407 We have expressed the opinion[1] that while it is desirable if not essential, that the same Constitution Act should make provision both for the establishment of autonomy in the Provinces and also for the establishment of the Federation the establishment of Provincial Autonomy is likely to precede in time the inauguration of Federation although we consider that this interval should not be longer than is necessitated by administrative considerations It is clear therefore that the Constitution Act should contain provisions of a transitory nature which will, on the inauguration of Provincial Autonomy settle the Constitution and powers of the Central Government and Legislature which are for the time being to co-exist with the autonomous Provinces until such time as they can be replaced by the Federal Government and Legislature for which provision will be made in the Constitution Act

Proposals in White Paper

408 This matter is dealt with very briefly in the White Paper[2] The scheme there contemplated is that the Constitution Act will contain provisions enabling temporary modifications to be made in the provisions relating to the Federation so as to enable the present Indian Legislature to continue in existence to suspend the operation of the provisions relating to the Council of Ministers to be appointed by the Governor-General and to provide during the interim period for the administration of all Departments of the Central Government by the Governor-General with the assistance of Counsellors responsible to himself as though they were Reserved Departments Examination of these proposals has led us to regard them as not in all respects appropriate for instance one effect (which we understand was not in fact in the mind of His Majesty s Government when the proposal was framed) of treating all Departments of the Central Government as for the time being Reserved Departments within the meaning of the White Paper would be to remove from the purview of the Legislature all supply required for Central purposes and to make it non-votable We fully accept so far as it goes the general intention stated in the White Paper as underlying these proposals viz that the Central Government though necessarily deprived of much of its present range of authority in the Provinces should for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act But we are of opinion that the actual method proposed in the White Paper for securing this result is not the best available and, indeed that the purpose to be achieved is not fully stated.

Objects to be secured

409 We do not attempt to set out in detail the method which should be adopted to secure the object in view since we recognise that the problem is largely one of the technicalities of draftsmanship We think it right however to indicate the general purposes which, by whatever method ought in our opinion to be attained as the

[1] *Supra* para. 157

[2] White Paper Proposal 202.

result of these transitory provisions. It is clear, in the first place, that it will be necessary to keep in being the existing Central Legislature, composed as at present and elected upon the existing franchise, and with the existing number of nominated members, official and non-official, and, in the second place, there should in our opinion be no necessity during the transitory period to alter the composition of, or the method of appointment to, the existing Central Executive But, granted these two premises, it is equally clear that the establishment of Provincial Autonomy will necessitate consequential changes in the powers of both the Central Legislature and Executive, which will differ but little from the changes which will result from the establishment of Federation

Modifications in WhitePaper proposals recommended

410 Provincial Autonomy as envisaged by our recommendations necessitates, no less than Federation, a statutory distribution of legislative powers between the Central and Provincial Legislatures, and a distribution which will be identical with that contemplated under Federation Similarly, Provincial Autonomy will involve, so far as the Provinces are concerned, the same statutory distribution of financial powers and resources as that contemplated under Federation And, in order to determine questions arising between Centre and Provinces out of their legislative and financial relationships, a Court with the same powers in this sphere as it is proposed to confer on the Federal Court will be no less necessary during the interim period than under Federation So far as the Executive is concerned, Provincial Autonomy involves the same limitations upon the powers of the Central Executive in relation to the Provinces as will be involved for the purposes of Federation, and, in that connection, it will be no less necessary under Provincial Autonomy than under Federation to differentiate between the functions of the Governor-General in Council (at the moment a corporate body, exercising corporately with very narrow exceptions all the functions of the Central Executive) and those of the Governor-General In other words, it will be as necessary under Provincial Autonomy as under Federation to give the Governor-General personally that control over the Governors in the exercise of their special responsibilities and of matters left by law to their discretion which is involved in our proposals relating to Provincial Autonomy, and to make it clear that the power which under Federation will vest in the Governor-General acting in his discretion to give mandatory directions through the Governors to Provincial Governments, with which we have already dealt[1], must be vested during the transitory period also in the Governor-General acting in his discretion We consider further that the recommendation which we have made[2] with regard to the settlement of disputes between Province and Province, or between the Centre and a Province, with regard to water rights should also be brought into force during the transitory period, and that from the date of the

[1] *Supra*, paras 221–22
[2] *Supra*, para 224.

inauguration of Provincial Autonomy the Governor-General should become solely responsible for the control of the relations between the Crown and the States.

Details should be left to draftsman.

411 Such in our view are the purposes which any transitory provisions should be designed to secure and as we have already indicated we think that it should be left to the ingenuity of the draftsman to suggest to His Majesty's Government the best and most appropriate method of carrying them into effect.

SECTION VI

BURMA

(1) Introductory

The "Burma White Paper"

412 The White Paper, as we have said elsewhere, does not deal specifically with Burma, because at the date when it was issued opinion upon the constitutional problem appeared to be still indefinite The Secretary of State has, however, submitted to us Proposals for a scheme of constitutional reform in Burma, which are set out in a document very similar to the White Paper This document has been printed among the Records of the Committee,[1] and it will be convenient to refer to it hereafter as "the Burma White Paper", but the Secretary of State has made it plain that its recommendations are not to be taken as representing the final and considered policy of His Majesty's Government, but only as a first sketch of the main lines of a possible Constitution, if Burma is separated from India Since this document was submitted to us, we have had the advantage of full discussions with the Burma Delegates, who also furnished us before and after their departure from this country with a number of memoranda on the Proposals, to which we have given our close attention and which have been of great value to us These memoranda are also printed among the Committee's Records

Subjects to be discussed

413 We propose in this section of our Report to give first a short account of Burma and of the reasons which have led us to the conclusion[2] that it should not form part of the Indian Federation, secondly, to consider the very important question of the trade relations between India and Burma after separation, and thirdly, to set out our recommendations as to the future government of the country in the form of a commentary upon the Burma White Paper

The Province of Burma

Area of Province

414 Burma is the largest of the Provinces which at the present time constitute British India It extends from the high mountainous area in latitude 28° N, where the unadministered tribal tracts of Assam and Burma march with Tibet and China, to the mouth of the Irrawaddy, latitude 16° N, and to Victoria Point, latitude 9 58° N, on the narrow Malay Peninsula, which divides the Gulf of Siam from the Bay of Bengal Its total area is some 234,000 square miles, Madras, the next largest Province, has an area of about 136,000 square miles The population of Burma is, however, only 14,500,000, which is less than the population of any other existing Indian Province, except Assam and the North-West Frontier Province, with areas of 55,000 and 14,000 square miles respectively.

[1] Reproduced for convenience as the Second Appendix to this volume (pp 381–408)

[2] *Infra*, paras 422 and 434.

Physical features.

415 The Province falls into three main geographical divisions on the west Arakan lying between the Bay of Bengal and the range of hills known as the Arakan Yomas which mark the western side of the Irrawaddy basin in the centre the Irrawaddy basin which is in many ways the heart of Burma and the true home of the Burmese people and on the south-east the long narrow strip comprising the old province of Tenasserim which runs down the west side of the Malay Peninsula to Victoria Point, with Moulmein as its capital These two sub-Provinces Arakan and Tenasserim, constituted the nucleus of British territorial dominion in Burma and were administered as distant appanages of Bengal. The physical characteristics of these three divisions present striking contrasts and it is a far cry from the City of Rangoon planned and laid out on modern lines with a population of 400 000 and a port handling a volume of exports and imports only surpassed in India by Calcutta and Bombay to the sparsely inhabited mountain tracts where the most primitive forms of cultivation afford a precarious living to isolated tribal communities Political consciousness ranges correspondingly from that of the European-educated barrister with nationalist ambitions as eager as any to be found in the Provinces in India to the entirely negative attitude of the Wa head hunter or the tribesman of the Chin Hills whose sole political emotion is probably an inherited antipathy for and suspicion of his cousin in the plains.

416 The steep and densely wooded mountains on the north and north-west of Burma where it marches with Assam Manipur and Bengal cut off access from India while on the east where its neighbours are the Chinese province of Yunnan in the north and French Indo-China and Siam in the south intercourse with adjacent countries is only possible by means of a few difficult caravan routes Between continental India and Burma intercourse is and must be wholly by sea and Rangoon is 700 miles by sea a forty eight hours voyage from Calcutta and 1 000 from Madras In these circumstances it is not surprising that the influence which Burma can exert on Indian political tendencies and the interest which India generally feels in Burma s affairs are of the slightest. Conditions in the two countries are in many respects markedly different Buddhism being the prevailing religion in Burma the difficulties created in India by caste and the potential clash of religious forces are hardly existent in Burma but against this must be set the factor of another form of communalism based on racial cleavages. Another notable point of difference is that the women of Burma are regarded socially and politically as on an equality with men to an extent as yet rarely found in any part of India The Burmese language is spoken by the great majority of the inhabitants though there are numerous local dialects. Of the total population some 10 000 000 are Burmans 1,250 000 Karens, and 1 000 000 Shans inhabiting for the most part the frontier tracts and of the non indigenous races the most numerous are Indians who number approximately 1 000 000

Summary British connection with Burma

417 Trading relations between the United Kingdom and Burma began in the latter part of the seventeenth century, but it was not until 1824 that, in retaliation for the invasion of Manipur and Assam by Burmese forces from Arakan, British troops from India were landed in Burma and seized Rangoon and the Tenasserim Coast, which by the Treaty of Yandabo in 1826 were, with Arakan, ceded to Great Britain In 1852, following a series of outrages on British subjects by the Burmese Governor of Rangoon, for which no redress could be obtained from the Burmese King, the second Burmese War ended with the annexation of the province of Pegu , and ten years later the coastal districts of Arakan and Tenasserim, with Rangoon and Pegu, were formed into a Chief Commissioner's Province known as Lower Burma or British Burma The friendly relations which had been established in 1867 with King Mindon Min came to an end with the accession in 1878 of King Thibaw, who maintained himself on the throne by the ruthless massacre of all who opposed him, oppressed British traders, and finally entered into negotiations for alliances with European powers In 1885 the Government of India presented the King with an ultimatum, which was rejected , a British force entered Mandalay without resistance , the King was deposed, and on 1st January, 1886, Upper Burma was by Proclamation annexed to the British Crown Many years were occupied in restoring order, but gradually a regular system of administration was established , and in 1897 Upper and Lower Burma were constituted as a single Lieutenant-Governorship, with a Provincial Government and a Legislative Council, which originally comprised nine nominated members (including four officials), and was gradually expanded until in 1920 it contained thirty members, two elected by the European Chamber of Commerce and the Rangoon Trades Association, and twenty-eight (including twelve officials) nominated by the Lieutenant-Governor

Attitude of the political parties to separation

Burma and the 1919 reforms

418 The Declaration of 1917, which held out prospects of advance to Burma no less than to other Provinces, encouraged the growth of a vigorous Home Rule movement, and also, as an immediate objective, a strong demand that Burma should enjoy as fully as the rest of India the advance towards responsible government made possible by the reforms of 1919 A series of deputations of Burman political leaders between 1918–1920 pressed for the application to Burma without restriction or diminution of the dyarchical system of government granted to the Provinces of India by the Act of 1919 In 1921 the Secretary of State decided to recommend to Parliament the extension to Burma of the reforms inaugurated by the Act, and the recommendation was endorsed by the Standing Joint Committee of Parliament on Indian Affairs on 25th May, 1921.

Burma constituted a Governor's Province

419 Particular questions such as the franchise suitable to conditions in Burma the composition of the Legislative Council and the subjects to be transferred to the administration of Ministers were remitted to a Burma Reforms Committee presided over by Sir A F Whyte. The proceedings of the Committee were hampered by a boycott organised by the General Council of Burmese Associations and the societies affiliated to it who demanded complete Home Rule and refused to have anything to do with dyarchy a refusal persisted in until the autumn of 1932 but despite the boycott the Committee was able to carry through its task and following on its Report Burma was constituted a Governor s Province in January 1923 with a reformed Legislative Council and a dyarchical system corresponding to that in other Provinces There was however one notable difference for in Burma, unlike all other Provinces except Bombay the departments transferred to Ministers included from the outset the Forest Department which in Burma is of peculiar importance not only because of the considerable revenue derived from the forests but also because no less than three fifths of the total area of the Province consists of forest land

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420 The active political leaders in Burma who accepted as a first instalment the measure of self government afforded by provincial dyarchy did not on that account abandon their conviction that both on racial and on economic grounds it would be better for Burma to pursue her own distinct line of development at the first possible opportunity and foresaw that such an opportunity would be likely to occur after the ten year period prescribed in the Act of 1919 Accordingly they took their seats in the Legislative Council, and when the time came stated their opinions freely to the Indian Statutory Commission who reported that they had little doubt that the resolution passed unanimously by the Legislative Council during their visit to Burma in favour of separation from India was the verdict of the country as a whole. On the other hand the party which in 1922 had boycotted the Whyte Committee and had refused to enter the Legislative Council or co-operate in a dyarchical form of government stood aloof and tendered no evidence before the Commission Their unhelpful tactics have tended to obscure the fact that they too seek and have steadfastly sought as their ultimate objective Burma s independence of India and the development of the country on separate lines The difference between them and what we may call the co-operating parties has we think been mainly one of tactics Whereas the latter are and have been prepared to accept what is granted to the rest of India as a stepping stone to something better the non-co-operators persist in rejecting every offer made and in standing out on every occasion for the impossible in the belief that thereby they increase the prospect of extracting from the British Government and Parliament a more liberal constitutional scheme for Burma. They took the opportunity afforded

by the election campaign in 1932 (which was to give the electorate a means of expressing through their elected members their views on the question of separation) to excite a wave of feeling not so much against the idea of separation as against the Constitution for a separated Burma outlined by His Majesty's Government at the close of the Burma Round Table Conference, on the ground that it, too, was, as it undoubtedly and inevitably is, dyarchical in nature Having decided to reject the Constitution held out as a concomitant of separation, they found it difficult to distinguish this policy from opposition to separation in the abstract; and, describing themselves for the purposes of the election as "anti-separationists," they were driven to advocating the only possible alternative, that is, inclusion in the Federation

Both parties desire separation

421 We have satisfied ourselves by discussion with the Delegates from Burma representing the anti-separationist parties that they have no real desire to see Burma included in an Indian Federation, and indeed they frankly admit that on their own terms they would unhesitatingly prefer separation. The policy they have adopted contemplates only the inclusion of Burma in the Indian Federation on the basis of special financial and fiscal conditions (which in our judgment would be inconsistent with the fundamentals of a federal system), and on the understanding that at her chosen moment Burma would be at liberty to secede We have no hesitation in describing this policy as wholly impracticable, and we can affirm that the Delegates from India who have been associated with us have just as little hesitation in ruling it out as incompatible with the conception of Federation Its adoption by the Burman anti-separationist leaders is to be explained, we believe, by the mistaken idea that if Burma, as a unit of the Indian Federation, were to take part in such further advances towards full responsible self-government as may be made by the Federation, she would on leaving it at the moment of her choice start off on her own separate course so much further forward in the direction of her ultimate constitutional goal Criticism in detail of this conception of future possibilities would involve us in dangerous fields of speculation, and we think it sufficient to record our opinion that, even if Burma could be permitted to enter the Indian Federation and to leave it at will, it is certain that Parliament would still regard it as its function to regulate her constitutional status and her relations with other possessions of the Crown The inference which we draw from our examination of the course pursued by the Burman anti-separationists is that, in fact, they desire the separation of their country from India, but are distrustful of the consequences which may follow if the step is taken now, and we see no reason to dissent from the conclusion at which the Statutory Commission arrived that "so far as there is public opinion in the country it is strongly in favour of separation", nor do we believe that a recommendation in this sense would seriously offend Burman sentiment in any quarter

Separation justified on practical grounds.

422. The question is not however one to be decided solely on considerations of sentiment The Statutory Commission adduced many other most cogent grounds for the separation of the two countries—the absence of common political interests with continental India the constant and increasing divergence of economic interests the financial inequities (as they appear in Burman eyes) which association with India inevitably entails and the fact that the indigenous peoples of Burma belong to the Mongolian group of races and are distinct from the Indian races in origins in languages and by temperament and traditions They were also of opinion that separation should take place at once We base our recom mendation they observed that separation should be effected forthwith on the practical ground that no advantage seems likely to accrue from postponement of a decision to a future date. The constitutional difficulties of securing Burman participation in the Central Government of India are not prospective but actual. They will grow with every advance in the Indian Constitution and will prejudicially affect not Burma only but India itself [1] By the emergence into the field of practical politics of the proposal for an Indian Federation these arguments are greatly reinforced Federation would not come into being simultaneously with Provincial Autonomy but already there are projects directly or indirectly ancillary to Federation which are rapidly taking shape and the more deeply Burma became involved in these as a result of her present position as a Province of British India, the more difficult would be her dis-entanglement from them hereafter We are therefore clearly of opinion that the separation of Burma if it is to be effected at all should not be postponed

Commercial Relations between India and Burma

omic s of separation.

423 We should have no hesitation at all in endorsing the con clusion arrived at by the Statutory Commission if it were not that grave doubts as to the material benefits likely to accrue to Burma as a result of separation have been expressed by persons well qualified to hold authoritative opinions on the complex problems involved It may be an invidious task to balance national aspirations and sentiment against estimates of profit and loss but we feel that it would be a sorry concession to Burman sentiment if we were to recommend separation without weighing carefully the possibility of a serious diminution whether immediate or prospective of material prosperity We have alluded to the increasing divergence of economic interests to which the Statutory Commission drew attention and further evidence of this divergence has been provided by events since the date of their Report It is said that if Burma were separated from India she would be free to develop her own fiscal policy on lines which are impossible for her while she is tied to India and

[1] Report Vol. II. para. 224

that only by separation can she secure the freedom to do so The matter is, however, not quite so simple Separation would undoubtedly enable Burma to evolve a fiscal policy more suited to her peculiar needs than the high tariff policy of the Government of India; but it takes time to develop a policy, and still more to gather its fruits, and separation must have consequences of immediate effect, both financial and economic

Tariffs and separation.

424 An apportionment of assets and liabilities between the two Governments would have to be made, as well as of revenues and charges which are now classified as central The Statutory Commission examined the probable results of such an apportionment, and a more detailed but still incomplete investigation of this aspect of the question was made after the first Round Table Conference, the results of which are embodied in the Report known as the Howard-Nixon Report The joint investigators were not able to agree as to the basis of adjustment to be adopted in respect of certain charges, and the statistics on which they worked have been substantially affected by the general economic depression, to which Burma, depending almost entirely on the export of natural products, has been exposed as severely perhaps as any country in the world But we are satisfied, after examining the more recent statistics furnished to us by the Government of Burma, that Burma is at any rate not likely to be any worse off in respect of net revenue as a result of separation, and indeed, if economic conditions improve, may gain considerably But as regards the immediate effects on trade the position is not so clear A very considerable trade between Burma and India, averaging in value in normal times some 40 crores (or £30 million) a year, has grown up in the 48 years since the whole of Burma became part of the Indian Empire and it has grown up on a tariff-free basis, the Province of Burma being within India's tariff wall These conditions would be wholly altered by the fact of separation Burma would cease to be an economic, no less than a political part of British India, and, if nothing is done to prevent it, the tariff of each country would apply against the other

Effect of tariffs on India-Burma trade.

425 We conceive that one essential provision in any Constitution that may be devised for Burma in the event of separation will be that existing Indian laws shall continue to have effect in Burma after separation unless and until amended or repealed by the Burma Legislature Some such general provision would in any event be necessary in order to provide the basis on which the administration may be carried on without interruption, but if it extended to the Indian Tariff Acts and the Schedules attached to them the result would be that Burma would have to levy the customs duties prescribed by these Schedules on all goods imported into Burma, including goods imported from India, which hitherto have been free from duty, and similarly with India in the case of goods imported from Burma Of Burma's total exports, averaging in

normal times about 56 crores (£42 millions) per annum about 48 per cent. (or £20 millions) goes to India, representing about 14 per cent of India s total imports. Of Burma s total imports averaging in normal times about 28 crores (or £21 millions) per annum about 42 per cent. (or £9 millions) are from India representing 5¼ per cent of India s total exports Thus the India Burma trade constitutes nearly half of Burma s export and import trade and an appreciable portion of that of India and it is clear that the heavy duties of the Indian protective tariff might have a serious effect upon it

Suggestions for a Trade Convention.

426 We recall that the Burma Sub-Committee of the First Indian Round Table Conference while advocating the principle of separation expressed the hope that it might be found possible to conclude a Trade Convention between India and Burma and stressed the importance of causing as little disturbance as possible of the close trade connections which at present exist between the two countries Detailed suggestions for such a Convention were submitted to us by the Burma Chamber of Commerce and we have had the advantage of studying memoranda on the subject furnished by the Delegates who represented that Chamber and the Burma Indian Chamber of Commerce and who also gave oral evidence before us Briefly the suggestion is this that until such time as the two new Governments are able themselves to conclude a Trade Agreement the existing fiscal relations between India and Burma should be maintained by special statutory provision in the two Constitution Acts This suggestion if adopted would leave Burma bound for the time being to impose on imports from other sources than India the duties scheduled to the existing Indian Tariff Acts But one of the principal considerations urged in favour of the separation of Burma from the rest of India is that the heavy duties imposed by India on certain classes of manufactured goods for the protection of Indian industries are detrimental to the interests of Burma which demand the cheap importation of such commodities as manufactured iron and steel The Chamber of Commerce would meet this difficulty by giving liberty to both countries to alter their tariffs (which would at the outset be identical) in relation to third countries subject to arrangements designed to prevent the import of goods on which the tariff might have been lowered into either India or Burma as the case might be in order to re-export to the other with a proviso that neither country shall without the consent of the other vary existing tariff rates in respect of an agreed list of goods or commodities that is to say goods or commodities in respect of which either India or Burma enjoys by virtue of the existing freedom of trade between them a preference so valuable that any reduction of it would seriously affect the trade in that article between the two countries

The suggestions criticized.

427 These proposals are at first sight attractive but they rest on a hypothesis which we believe is not likely to be substantiated in fact. The Memorandum of the Chamber of Commerce strongly

deprecates the assumption that the Government of Burma will need any additional revenue which might result from taxing the India-Burma trade It assumes on the contrary that as the result of the financial settlement with India, Burma will gain to an annual extent sufficient, even in the present depressed conditions, to give her a small surplus with which to meet new expenditure We are informed that the Government of Burma do not share this view, and anticipate that, even allowing for a favourable settlement, the future Government of Burma will need to raise some revenue from trade with India. But however that may be, it is obvious that whatever gain the settlement may bring to Burma, it will involve an approximately equal loss to Indian revenues , and the Government of India, we understand, have no doubt at all that they will have to look to taxes on the trade with Burma to make good some of this loss It may be assumed therefore, that after separation it will not be possible, on the Indian side at any rate, to maintain even for a short period an India–Burma trade free of customs duties , and when one invasion of the free trade system has been made, compensating adjustments will probably be required all round

Moderate tariffs not necessarily injurious to trade between the two countries

428 A departure from complete freedom of trade need not in all cases seriously prejudice trade between India and Burma, which depends not so much on the absence of duties as on the margin of protection afforded against competing goods from other sources ; and it may well be that in respect of several classes of goods exchanged by Burma and India the imposition of a light import duty would not materially affect the flow of trade This, however, could only be ascertained by expert examination of the trade item by item , and we are of opinion that the first step to be taken is that Burma and India should agree on a list of goods on which duties could safely be imposed within limits sufficiently low to secure the India-Burma trade against dislocation It would also be necessary to deal with the question of substituting equivalent import duties for the excise duties at present imposed in India on Burma products, and vice versa To secure its object, such an agreement would have to be operative from the moment of separation, and it must therefore have been concluded before the new Governments are established, i e , between the existing Governments But an agreement by the existing Governments can only be made binding on the Governments to be established by the new Constitution Acts, by statutory provision in both Acts

Burma may desire to reduce existing high tariffs on certain goods.

429 Though the primary purpose of any agreement imposed upon the new Governments of India and Burma by the Constitution Acts would be the regulation of India-Burma trade with the minimum disturbance of its existing conditions, this cannot be achieved in isolation The imposition of duties on goods previously exchanged between India and Burma on a no-duty basis may affect the questions of the duties properly leviable by either country on competing

goods from other sources. Moreover Burma may desire to reduce the high protective duties at present imposed by the Indian tariff on certain manufactured goods imported from outside This is recognised by the Burma Chamber of Commerce and their representative in his supplementary memorandum [1] makes specific suggestions for dealing with the case and also with the question of re-export from the country of the lower tariff to the other country The agreement should therefore contain as its secondary purpose provisions enabling either country to vary its tariffs on goods from outside sources but within prescribed limits so as not to defeat the primary purpose for which it is made.

Period during which a Trade Convention should continue in force.

430 An agreement of this kind embodied in the Constitution Act even though mutually advantageous to the two countries must necessarily constitute to some extent an encroachment upon the fiscal liberty which Burma after separation is to enjoy and which India already enjoys The encroachment would be less if the agreement provided full opportunity to both parties to vary details by mutual consent during its currency but it is in any event desirable that the agreement itself should continue for the shortest period which is compatible with the securing to those concerned in the India Burma trade of a reasonable measure of certainty as to the immediate future One possible course would be to impose the agreement for an undefined period subject to denunciation by either country at reasonable notice say twelve months. If the agreement proved to be congenial to the needs of both such an arrangement might promise the greatest prospect of stability but there is a risk that national *amour propre* might lead one or both of the new Governments to denounce it as soon as it had the power to do so with the result that the agreement might last for little more than the period of notice. Another course advocated by the Burma Chamber of Commerce would be to enact that the agreement should continue until replaced by another concluded between the two new Governments This however would give one Government if it found that it enjoyed an advantage at the expense of the other the option of retaining that advantage indefinitely nor do we think that it would be fair to impose upon the future Government of Burma in the period immediately following separation the heavy burden of negotiating an intricate Trade Agreement In our opinion the legislative provisions for both India and Burma should state the minimum period which must elapse before either party to the agreement can give notice to terminate it and also the length of the period of notice which might conveniently perhaps be twelve months We do not ourselves make any more precise recommendation as to what the first period should be than that it should be not less than one year for we think it would be far best that the actual period should like the content of the Agreement be fixed by mutual accommodation between India and Burma in

[1] Records [1933–4] B 2 p 49

the course of the negotiations If, however, they should fail to reach agreement on this point we think that His Majesty's Government, who would no doubt be apprised of the differing views held, should insert a specific period in their legislative proposals which will be laid before Parliament We think also that the agreement should contain provisions for the mutual adjustment of details from time to time during its currency, where both parties desired such adjustments to be made

Statutory provisions recommended

431 We recommend, therefore, that the Act should contain provision for an Order in Council empowering the Governor-General of India and the Governor of Burma respectively in their discretion (i) to apply for a prescribed period to the exchange of goods and commodities between India and Burma a scale of customs duties which shall have been mutually agreed between the existing Governments of India and Burma, or determined by His Majesty's Government in default of agreement, the scale not to be susceptible of variation during the prescribed period except by mutual consent; and (ii) to apply to specified classes of goods and commodities imported into either country from outside sources such variations of the duties imposed by the Indian Tariff Schedules at the date of separation as may have been mutually agreed by the existing Governments of India and Burma before separation, or determined by His Majesty's Government in default of agreement, or as may be mutually agreed thereafter by the two Governments during the prescribed period

Relief from double income-tax.

432 There is a cognate matter which it is important should be settled before separation comes into effect, namely, the means of affording relief to persons, firms and companies who might otherwise be exposed by the act of separation to a double liability to income-tax We regard it as important that such relief should be afforded, and we understand that the question of the means best adapted to achieve the purpose is now under examination Pending the result of this examination we make no specific recommendation as to the statutory provision required, but we think that this matter should be dealt with on similar lines to those which we have recommended in the case of the Trade Agreement

Immigration of Indian labour

433 The negotiations for a Trade Agreement might also be extended to the regulation of the immigration of Indian labour into Burma for the first few years after separation We allude elsewhere[1] in our Report to the necessity of withholding from Indian-British subjects the unrestricted right of entry into Burma after the separation, in order that the Government and Legislature of Burma may be free to regulate the influx of cheap labour in competition with the indigenous sources of supply The problem is already acute, as the Royal Commission on Labour in India have recorded, and we

[1] *Infra,* para 473

endorse the opinion expressed by that Commission that the best way of solving the problem is by mutual agreement between the two Governments concerned. But the period immediately after separation is evidently not the most suitable opportunity for negotiating an agreement on a matter which is peculiarly capable of provoking lively animosities and we are of opinion that whether or not in direct connection with an agreement to regulate trade relations at any rate at the same time an agreement to control the influx of Indian labour into Burma should be concluded between the existing Governments Such an agreement which might conceivably run for the same period and be determinable on the same notice as the Trade Agreement (though this is a point on which we wish to make no definite recommendation) would also need to be made statutorily binding on both Governments for the period of its validity

Conclusions

434 The difficulty of regulating the economic relations of India and Burma in the period immediately following separation has presented itself to us as the most serious obstacle to a recommendation in favour of separation which on all other grounds seems plainly to be indicated. We were much impressed by the views of the Delegates representing commercial interests both European and Indian on the disturbance of India Burma trade which might result from separation We believe however that an agreement such as we have suggested would enable both countries to tide over the critical period and in these circumstances we regard ourselves as justified in recommending that the separation of Burma from India should be effected simultaneously with the introduction of the constitutional changes which we have recommended in the case of the other Provinces of India.

(2) The Burma White Paper

The Government of Burma a unitary government.

435 Before considering in detail the proposals in the Burma White Paper we have certain preliminary observations to make It is in the first place evident that a new Constitution for Burma whatever may be its precise form must differ in many respects from that which we have recommended in the case of the Governors Provinces in India. The Government of Burma will be a unitary government and therefore no question of any distribution of executive or legislative powers will arise since the Government will unite in itself all the powers which in a Federated India will be divided between the Federal and Provincial Governments

The Karenni States.

436 Next we desire to draw attention to some of the legal consequences of separation On the Indo-Siamese frontier of Burma lies the territory known as the Karenni States whose independence

was guaranteed by a treaty with the former Burmese Kingdom in 1875 These States are not a part of British India, but are nevertheless part of "India" as defined by the Interpretation Act, 1889, because they are under the suzerainty of the Crown exercised through the Governor-General. They are under the direct control of the Government of Burma, jurisdiction in them being exercised by the Governor on behalf of the Governor-General by virtue of powers delegated under the Foreign Jurisdiction Act; but their constitutional position seems to differ in no respect from that of Indian States in which the Crown exercises jurisdiction by treaty, usage or otherwise The jurisdiction therefore which is at present exercised by the Crown through the Governor-General of India, and through the Governor of Burma by virtue of the powers delegated to him, will have to be resumed into the hands of the Crown, and thereafter exercised directly through the Governor of Burma, without the intervention of the Governor-General of India The Burma White Paper rightly proposes that the first of these objects shall be secured by the Constitution Act itself; for the second a new Foreign Jurisdiction Order in Council will clearly be required

Application of Acts of Parliament extending to His Majesty's Possessions outside British India

437 We assume that provision will be made for the continued application to Burma after the separation from India of all Acts of the Imperial Parliament which extend at the present time to Burma as a part of British India. But there are a number of other Acts of Parliament which apply to His Majesty's overseas possessions exclusive of British India, and when Burma ceases to be a part of British India, it would seem that those Acts would, in the absence of provision to the contrary, apply to Burma as they apply elsewhere Thus, all Acts which are declared to extend to "colonies" would at once become part of the law of Burma, since "colony" is defined in the Interpretation Act, 1889, as "any part of His Majesty's dominions exclusive of the British Islands and of British India" Our attention has been drawn in this connection to the Colonial Laws Validity Act, 1865, some of the provisions of which appear to be quite inconsistent with any Constitution which we could contemplate for Burma We think that special provisions will be required in the Constitution Act to deal with this point, and we agree also with the Secretary of State that no room should be left for any suggestion that the new status of Burma will be assimilated to that of a Crown Colony Apart from this, it will obviously be necessary to make provision for the continued application to Burma of existing British Indian laws, until repealed or amended by the Burma Legislature or other competent authority, but there will have to be some machinery for adapting those laws to meet the new constitutional situation, as, for example, by substituting the Governor of Burma for the Governor-General in Council, where the latter expression occurs in an existing Act

Agreements at present binding upon Burma as a part of British India.

438 It is proposed that the Constitution Act should declare that all rights and obligations under international Treaties Conventions or Agreements which before the commencement of the Act were binding upon Burma as part of British India shall continue to be binding upon her [1] A similar provision is to be found in section 148(1) of the South Africa Act 1909 the Act which constituted the Union of South Africa. In that case however the States or Provinces by or on whose behalf the Treaties Conventions or Agreements had been made became part of a new and larger organism which necessarily assumed responsibility for all the existing obligations of its constituent members but we are not clear that the case of a State which becomes autonomous by separation from a larger State is precisely analogous at any rate so far as rights as distinguished from obligations are concerned, and we are disposed to think that the matter may require some further examination.

His Majesty's title in relation to Burma.

439 We should mention here that the Delegates from Burma both in a Joint Memorandum signed by several of them and orally before us expressed the hope that His Majesty might be pleased to adopt the title of King Emperor of Burma. It would not be proper for us to express any opinion on this suggestion until His Majesty s pleasure had been taken but we may perhaps be permitted to make the following observations His Majesty s full style and title is George V by the Grace of God of Great Britain Ireland and of the British Dominions beyond the Seas King Defender of the Faith Emperor of India and Section 1 of the Government of India Act therefore correctly describes the territories for the time being vested in His Majesty in India as governed by and in the name of His Majesty the King Emperor of India. From this it is clear that though it is not incorrect to speak of His Majesty in relation to His Indian Empire as The King Emperor the expression King Emperor of India is not legally a part of His Majesty s style and title. Hence a reference to Burma in the Royal Title could subject to His Majesty's consent only be introduced by legislation which since the Statute of Westminster became law would require the concurrence of the Dominion Governments The Delegates also desired that the Governor should in future be known as the Governor-General of Burma but this too is a matter on which we think that His Majesty s pleasure would have to be taken.

The Executive

The Executive Government.

440 The proposals in the Burma White Paper with regard to the Executive follow generally those in the India White Paper with regard to the Executive Government of the Federation and of the Provinces that is to say executive power and authority is to be vested in the Governor as the representative of the King aided and

[1] Burma White Paper Proposal 5

advised by a Council of Ministers[1] To avoid repeating at length what we have already said in earlier parts of our Report, we think it desirable to make clear at this point our intention that the modifications which we have recommended in the proposals in the Indian White Paper should *mutatis mutandis* be applied to the corresponding proposals in the Burma White Paper, but there are certain divergencies between the India and Burma White Papers to which we should draw attention, as well as other points which arise only in the case of Burma

Law and Order

441 The Council of Ministers will have a constitutional right to tender advice to the Governor in the exercise of the powers conferred upon him by the Constitution Act, other than powers connected with certain Departments which will be reserved for the Governor's own direction and control and matters left by the Constitution Act to the Governor's own discretion, but the Governor will be declared to have a special responsibility in respect of certain matters, and where they are involved will be free to act according to his own judgment The matters which it is proposed shall be reserved to the Governor's own direction and control are Defence, External Affairs, Ecclesiastical Affairs, the affairs of certain Excluded Areas, and monetary policy, currency and coinage. With these we deal later, but we point out that they do not include law and order, which will, therefore, fall within the ministerial sphere, as it will in the Indian Provinces, if our recommendations are accepted In general the same considerations apply in Burma, if separated, as apply in the other Provinces of British India But there are certain special circumstances which we think it right to mention On the one hand terrorism of the Bengal type is practically unknown among the Burman people, and communal strife arising from strong religious antagonisms is rare and unimportant To this extent the problem is less difficult than in other Provinces On the other hand Burma exhibits racial rivalries which on occasion have developed into violent riots between one community and another, and serious crime—especially crimes of violence—appears to be more rife in Burma than in India, in proportion to population the annual record of dacoities, murders and cattle thefts is very high This, no doubt, is due, in part, to the fact that barely 50 years have elapsed since, with the conquest of Upper Burma, British authority was established throughout the Province and British ideas of law and order began to be instilled into the whole countryside To this fact and perhaps also in some degree to the Burman temperament may, we think, be attributed the organised resistance to authority, amounting to armed rebellion and guerilla warfare, which has at times, even within the past few years, affected a large number of districts and which, owing to the difficult nature of the country and the lack of good communications, has

[1] Burma White Paper, Proposals 6–20

proved very troublesome to put down Nevertheless we are of opinion that the responsibility for law and order ought in future to rest on Ministers in Burma no less than in India and for substantially the same reasons At the same time bearing in mind the special features of the problem that we have described we think it essential that the Governor of Burma should have powers additional to the powers flowing from his special responsibility for the prevention of any grave menace to the peace and tranquillity of Burma as proposed in the Burma White Paper He should be given the same statutory powers against attempts to overthrow by violence the Government established by law as we have recommended should be vested in the Governors of Indian Provinces.[1] Further conditions in Burma manifestly necessitate the maintenance of an efficient and highly disciplined police force and we are of opinion that the recommendations which we made in an earlier passage[2] for the protection of the police forces in the Indian Provinces by safeguarding the statutes and rules which govern their internal organisation and discipline should be adopted in Burma also

The Burma Police.

442. The police in Burma consist of —(1) two civil police forces the District Police and the Rangoon Police which are organised on much the same lines as the police forces in the Indian Provinces and whose main duty is that of detecting and preventing crime and (2) ten battalions of the Burma Military Police Six battalions of the latter are frontier battalions stationed almost wholly in the excluded tribal areas contiguous to the frontiers and may be described as a watch and ward gendarmerie. Of the other four battalions one is a reserve battalion which provides drafts mainly for the frontier battalions and is also responsible for the protection of the railways in times of internal disorder and three are garrison battalions two with headquarters in Rangoon and one in Mandalay These though organised on a battalion footing serve in the districts in small detachments as patrolling parties and as a backing to the District Police and also supply Treasury guards and prisoners escorts. These services require a well armed and highly disciplined personnel and are entrusted in other Provinces to the so-called armed reserves of the civil police which do not exist under that name in Burma.

Future organization of Burma Military Police

443 We are informed that it is in contemplation to place the six frontier battalions and the reserve battalion of the Military Police directly under the Governor as part of the defence organisation, though it is not intended that they shall form part of the regular Defence Force or lose their primary police character If as we understand these battalions are at the present time stationed in the Excluded Areas in proximity to the frontiers it would clearly be

[1] *Supra*, para. 96
[2] *Supra* para. 93

impossible to transfer them with the ordinary civil police to the control of a Minister, and the proposed arrangement seems to us a reasonable and convenient one. We are informed also that in times of grave internal disorder the reserve battalion, and to a limited extent the frontier battalions also, have been called upon to act as additional police outside the Excluded Areas, before recourse is had to military aid; and if in future they become part of the defence organisation under the control of the Governor, it would be possible for the latter, in the exercise of his special responsibility for the prevention of grave menace to the peace or tranquillity of Burma, to deal effectively with a threatened outbreak without the use of troops, or alternatively to place additional forces at the disposal of the Minister for the same purpose.

Garrison battalions of Military Police

444 It is intended, we understand, that the three garrison battalions should pass under the control of the Minister responsible for law and order as part of the police force of the Districts, and they would thus correspond to the armed reserves of the civil police in the other Provinces The frontier and reserve battalions would, however, be available as a reserve striking force in the event of serious disturbance wherever it might occur, or to provide reliefs for men on continuous duty in the districts These proposals seem to us to be well conceived The Governor's responsibility for the preservation in the last resource of law and order in Burma may well be heavier than in many of the Indian Provinces, but his position will be stronger in that he will have under his own control the Department of Defence and the resources which it can afford in the way of additional military police as well as of troops We have only one suggestion to make In view of the reservation to the Governor of the Department of Defence, we are disposed to think that the designation of the three garrison battalions which will henceforth be under the control of the Minister as Military Police may tend to confusion We suggest, therefore, that some other designation should be adopted, and perhaps "the Burma Constabulary" might be regarded as appropriate

The Governor's special responsibilities

445 The Governor is to have a special responsibility[1] in respect of (*a*) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof, (*b*) the safeguarding of the financial stability and credit of Burma, (*c*) the safeguarding of the legitimate interests of minorities, (*d*) the securing to the members of the public services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests, (*e*) the prevention of commercial discrimination, (*f*) the administration of certain Partially Excluded Areas, and (*g*) any matter which affects the administration of any department of government under the direction and control of the Governor It will be seen that these special responsibilities are substantially the same as those proposed in the case of the Governor-General and Governors of Provinces. We have

[1] Burma White Paper, Proposal 17.

already recorded our views in relation to the first of them and subject to the governing factor that in the unitary government of Burma the special responsibilities and special and discretionary powers of the Governor-General and of the Provincial Governors in India respectively will be combined in the hands of the Governor we are of opinion that the recommendations which we have made elsewhere[1] in regard to these matters and in regard to arrangements for apprising the Governor of any question affecting them in India should apply with some necessary adjustments of form in the case of Burma The suggestion in the Joint Memorandum submitted by certain of the Burman Delegates that any dispute on the question whether in a particular case the Governor s special responsibilities are involved should be referred to the Privy Council for decision completely misapprehends the principle underlying the Proposals and nothing would be more likely to check a healthy constitutional development than to make the relations between the Governor and his Ministers a matter of law rather than of constitutional usage and practice

There are certain aspects of commercial discrimination in the case of Burma which are of sufficient importance to demand separate treatment and we also leave for subsequent consideration the question of the Excluded Areas

The Reserved Departments

Defence.

446 The subject of Defence has not the same importance in Burma as it has in India for there is no North West Frontier problem but as the Statutory Commission observe Burma has on her own borders a less definite but potential danger which if it actually emerged in concrete shape she could not deal with single-handed[2] So long as this is so it is clear that the Department of Defence must remain under the exclusive control and administration of the Governor and the more so since the main pre-occupation of those responsible for the defence of Burma must always lie in the vast Excluded Areas of the Province which are also to remain under the Governor s control. It is proposed[3] and we think rightly that the Governor should also have the title of Commander in Chief. The executive military power will be vested in him as the head of the Executive Government and the size of a Burma Defence Force would not in any event justify the separate appointment of a Commander in-Chief for Burma though we assume that there would continue to be a General Officer in command of the regular military forces We have already mentioned the proposals which are in contemplation with regard to the transfer of certain battalions of the Burma Military Police to the defence organisation The personnel of these battalions at the present time is we understand for the most part Indian being drawn from men who have served their time with Indian regiments

[1] *Supra* paras. 78-80 92 101 (so far as applicable) 170 and 171
[2] Report, Vol. II para. 220
[3] Burma White Paper Proposal 6.

and whether as time goes on it will be found possible to replace these with Burma personnel is not a matter on which we are competent to express any opinion We may refer to what we have said on this subject in connection with Indian army problems[1], but we desire also to point out that the policing and protection of the Excluded Areas, which lie along the frontiers of Burma and which form so large a proportion of the total area of the country, involve military considerations of a special kind We refer hereafter to the powers which the Burma Legislature will possess in connection with legislation for the enforcement of army discipline

Other Reserved Departments

447 External affairs and ecclesiastical affairs need no comment, except, in regard to the latter, to state beyond the possibility of misunderstanding that they have no concern with the Buddhist religion or any other religion of the population at large The affairs of the Excluded Areas raise, however, various questions which it will be more convenient to discuss separately[2]

Monetary policy, currency, and coinage.

448 The reservation to the Governor of matters relating to monetary policy, currency and coinage, differentiates the Burma White Paper proposals from those of India in a very important respect In India it is proposed that the Federal Ministers shall be responsible generally for finance, the Governor-General having only a special responsibility for the safeguarding of the financial stability and credit of the Federation, with a Financial Adviser to assist him in the discharge of this responsibility But it has always been made clear by His Majesty's Government that the establishment of a Reserve Bank, free from political influence, to which the management of currency and exchange could be entrusted, was a condition precedent to the transfer to Ministers of responsibility for the finance of the Federation. A Reserve Bank of India has now been authorised by Act of the Indian Legislature and measures are therefore in train for the fulfilment of the condition precedent But there is no separate Reserve Bank in Burma, nor, so far as we are aware, is it in contemplation to establish one, and we agree therefore, that the control of monetary policy, currency and coinage is properly reserved to the Governor

The Governor's Counsellors and the Financial Adviser

449 It is proposed to[3] empower the Governor to appoint at his discretion not more than three Counsellors to assist him in the administration of the Reserved Departments He will also be empowered at his discretion, but after consultation with his Ministers, to appoint a Financial Adviser to assist him and also to advise Ministers on matters regarding which they may seek advice The duties of the Financial Adviser will necessarily cover a wider field than those of the Financial Adviser to the Governor-General of India, not only because of the reservation to the Governor of matters relating to monetary policy, currency and coinage, but also because the Government of Burma will be a unitary Government,

[1] *Supra*, paras 179 and 180
[2] *Infra*, paras 458–463
[3] Burma White Paper, Proposal 11.

uniting in itself the financial powers which in India will be shared between the Federal and the Provincial Governments In these circumstances we do not think that we can endorse the proposal in the Burma White Paper that one of the Counsellors may in the discretion of the Governor be appointed Financial Adviser We assume that the proposal is based upon grounds of economy but it seems to us that any saving in expense which might be effected by a combination of the two offices would be more than counter balanced by the disadvantages which in our opinion would result We think that Ministers would be unlikely to avail themselves freely of the services of a Financial Adviser who was also in administrative charge of a Reserved Department. It is also very important that the Financial Adviser should be in a position in which he could take an impartial and independent view of the whole financial situation in relation to both the Transferred and the Reserved Departments and if he were at the same time one of the Governor s Counsellors he could scarcely avoid finding himself from time to time in a position in which his interest in one capacity conflicted with his duty in the other

The Legislature

The two Houses.

450 It is proposed[1] that the Legislature shall consist of the King represented by the Governor and two Houses to be styled the Senate and the House of Representatives. The Senate is to consist of not more than 36 members of whom 18 would be elected by the House of Representatives and 18 who may not be officials would be nominated by the Governor in his discretion. The House of Representatives is to consist of 133 members of whom 119 would be elected to represent general constituencies and 14 to represent special constituencies The Governor's Counsellors are to be *ex-officio* members of both Houses for all purposes except the right to vote. The Senate is not to sit for any fixed term but one-quarter of its members are to retire every two years. The House of Representatives is to continue for five years unless sooner dissolved.

Composition of the Houses and franchise.

451 There are no detailed proposals with regard either to the composition of the Houses or to the franchise in the Burma White Paper but the Secretary of State has since submitted a Memorandum which is printed among the Records of the Committee which contains valuable suggestions with regard to both these subjects[2] In our opinion suitable provisions can be embodied in the future Constitution Act on the basis of these suggestions but though we give them our general approval there are nevertheless certain points in which we think that they require modification, and to these we draw attention in the paragraphs which follow

[1] Burma White Paper Proposals 21 23 24 25–29.
[2] Records [1933–34] A1 p 10

Objections to system of rotational retirements for Senate

452. We understand that, in the case of those members of the Senate who are to be elected by the House of Representatives, the intention is to adopt the method of the single transferable vote. So far as this is designed to avoid the necessity of communal representation, it has our cordial approval, but we do not think that it will effect its object, viz, to secure adequate representation to substantial minorities, if the proposal in the Burma White Paper is retained, whereby one-quarter of the Senate retires at the expiration of every period of two years It has been pointed out in memoranda submitted to us by the Burma Chamber of Commerce and others that at the first election, when the full number of 18 seats are to be filled and the requisite quota of votes will be eight, the European, Indian and Karen communities at any rate could count on securing the election of their candidates, but that at the ensuing periodic elections, with only nine vacant seats to fill, no minority candidate could be elected unless all the minority representatives in the Lower House pooled their votes, because the necessary quota would be too large Alternative proposals have been made to meet this difficulty, but none seem to overcome it entirely, and after full consideration we have come to the conclusion that the system of rotational retirement is unsuitable, and that the better plan would be to provide that the life of the Senate shall be for a fixed period of seven years, unless it is sooner dissolved [1] But even so the problem of casual vacancies, which always causes difficulty under proportional representation systems, has to be faced, if the minorities are not to be placed in an increasingly unfavourable position as the seven years draw to a close We have considered more than one plan for meeting this difficulty, none of which is wholly satisfactory, and we think that the best course will be to provide that, where a casual vacancy occurs in a seat held by the representative of a minority community, only candidates of the same community as the vacating member shall be eligible We recognise that this to some extent introduces a communal element into the Senate, which we regret, but we do not see how in the circumstances it is to be avoided An alternative suggestion was that casual vacancies should be filled by the Governor's nomination, but we have felt bound to reject this for reasons which it is unnecessary to elaborate

Composition of House of Representatives

453 The proposals for the composition of the House of Representatives are fully set out in the Secretary of State's Memorandum, to which we have referred. They provide for 119 general constituencies and 14 special constituencies Of the general constituencies, 94 would be non-communal, 12 Karen, 8 Indian, 2 Anglo-Indian, and 3 European The special constituencies are the University of Rangoon, the Burmese Chamber of Commerce, the Burma-Indian Chamber of Commerce, the Burma Chamber of Commerce (European), the Chinese Chamber of Commerce, the Rangoon Trades

[1] The power of dissolution rests, of course, with the Governor in his discretion see *supra*, para 145

Association (European) and Labour (two Indian and two Burman) Out of the non-communal constituencies three seats would be reserved for women It will be observed that these proposals are based upon communal representation with separate electorates We had hoped that it would have been possible to abandon the principle of communal representation in the case of Burma however necessary it may be for British India but we have reluctantly come to the conclusion that for the present at any rate this is an impracticable ideal. It is true that as we have already observed there is very little religious cleavage in Burma since toleration is a marked characteristic of the Buddhist creed. There are however racial cleavages among the indigenous races there is a clear-cut division between Burman and Karen and the division between the indigenous and non indigenous (mainly European and Indian) communities is as marked as is the division between the non indigenous communities themselves We are not to be understood as suggesting that the different communities live otherwise than in amity with one another although the feeling between Burman and Indian especially as competitors in the labour market from time to time becomes acute but each community has its own culture and outlook on life and these do not always blend. It is also to be observed that the minorities have their own representation at the present time in the Burma Legislature and we are clear that none of them would be prepared to abandon it indeed the Burman Delegates themselves with few exceptions recognised even if reluctantly that the claim was one which must be met We therefore accept the proposals in principle but we are glad to observe a suggestion in the Secretary of State s Memorandum that it should be permissible for persons who are not members of the communities concerned to stand as candidates for communal constituencies We endorse this suggestion and we hope that it may help in the course of time to break down the barrier which at present exists

Women s seats.

454 It will be observed that three of the ninety four non-communal seats are under the proposals in the Memorandum to be reserved for women The representative of the women of Burma informed us however that Burman women did not desire this reservation and we are satisfied that this is so In these circumstances the question arises whether these three seats should be eliminated altogether or assigned elsewhere possibly as an addition to the representation of special interests We are of opinion on the information before us that the special interests are already adequately represented and that the total number of the House of Representatives should therefore be 130 instead of 133

Franchise for House of Representatives.

455 We agree generally with the proposals in the Memorandum[1] for the franchise for the Lower House which will result in a substantial increase in the electorate The present electorate of Burma consists of 1 956 000 men and 124 000 women and the

[1] Records [1933–4] A1 p. 10

proposals in the Memorandum will increase this number to 2,300,000 men and 700,000 women, or 23·26 per cent of the total population, as against 16·9 per cent The increase in the number of women voters is considerable, the proportion to the adult female population is increased from 4 per cent to about 21 per cent., and the proportion of women to men voters from 1 : 14·3 to 1 : 3·5 In British India our recommendations would increase the number of voters from 3 per cent of the total population of British India to 14 per cent, and the proportion of women to men voters from 1 : 20 to between 1 : 4·5 and 1 : 5, if all women eligible to vote apply to be put on the register The proportionate increase in the Burmese electorate is thus rather less than that in the case of India, both in the case of men and women The reason for this is that the number of voters on the register in Burma is already considerably higher in proportion to population than in India, and that the standard of living is considerably higher in Burma than in India, which means that a property qualification results in a larger proportion of the population being placed on the roll We are informed that, despite this large extension of the franchise, the Government of Burma regard the proposals as administratively practicable, and, that being so, we accept them The representative of the women of Burma urged that a *wifehood franchise should be included, as in India*, and, having regard to the exceptional position which women hold in Burma, we should have been glad to give favourable consideration to this suggestion We are informed however that the inclusion of a wifehood franchise would increase the total electorate by over 40 per cent and we hesitate to recommend so near an approach to adult franchise at present

Powers of Legislature.

456 The proposals of the Burma White Paper with regard to the powers of the Legislature follow the same lines as those in the case of India and need no further comment except on two points As in the case of the Indian Legislatures the Burma Legislature will have no power to make any law affecting the Army, Air Force, and Naval Discipline, Acts, but it is likely that for some time to come Indian forces will be serving in Burma the members of which are subject to the corresponding Indian Acts, and it is clear that it should also be beyond the competence of the Burma Legislature to repeal or amend any of the latter Acts There will also, as in British India, be certain restrictions on the power of the Burma Legislature to pass discriminatory legislation affecting persons domiciled in the United Kingdom, but questions will also arise as to their power to pass such legislation affecting persons domiciled in British India This, however, is a matter which will be more conveniently discussed later when the subject of discrimination in general is being considered [1]

Relations between the two Houses

457 Since the functions of the Government in Burma after separation will extend to all matters which in India will fall within the Federal as well as within the Provincial sphere, it would seem at first sight that the Senate in Burma should correspond, whether

[1] *Infra* para 473

in size or in the extent of its powers rather to the Federal Council of State than to any of the Provincial Legislative Councils If the House of Representatives has 130 members the Senate on the Indian analogy should have a membership of nearly 100 The proposals in the Burma White Paper however contemplate, as we have said a Senate of 36 members only and we understand that this accords generally with the views expressed at the Burma Round Table Conference We do not think that any larger body would be appropriate to the circumstances of Burma but that being so it must follow that the Senate must be regarded as a body having revisory and delaying powers like the Upper House in an Indian Province rather than one possessing substantially equal powers with the Lower House like the Council of State. Conflicts between the two Houses should be resolved in the manner which we have recommended in the case of the Indian Provinces[1] with this modification that it should be permissible for a Bill passed by the Senate but rejected by the House of Representatives also to be referred for decision to a Joint Session.

(3) Special Subjects

(a) *Excluded and Partially Excluded Areas*

Distinction between Excluded and Partially Excluded Areas.

458 The Burma White Paper proposes[2] that Excluded Areas should be reserved to the exclusive administration and control of the Governor but that Partially Excluded Areas should pass under the control of Ministers though the Governor will be declared to have a special responsibility in respect of the administration of these areas. The Excluded Areas are to be those areas which have been under the existing law notified as backward tracts the Partially Excluded Areas are to be those which are at the present time not removed from the jurisdiction of the Burma Legislature but which have been excluded from the operation of the Burma Rural Self Government Act and do not return members to the Legislative Council The area comprised in the first category extends to 90,200 square miles with a population of approximately 1 900 000 the second to 23 000 square miles with a population of approximately 370 000 and when it is remembered that the total area of Burma is 234 000 square miles it will be seen that the Excluded and Partially Excluded Areas together comprise very nearly one-half of the area of the whole Province though they are only inhabited by about one-seventh of the population Various questions arise with regard to these areas which it is necessary to consider in some detail.

Arbitrary nature of present classification.

459 In the first place the distinction which is at present drawn between the Excluded and Partially Excluded Areas appears to be to some extent an arbitrary one and we find it difficult to understand why some of the Partially Excluded Areas have never been notified as backward tracts though perhaps the reason may be in some

[1] *Supra*, para. 150
[2] Burma White Paper Proposal 10.

cases at any rate, that they are of so primitive a character that they have remained practically unadministered and it was therefore a matter of indifference whether they were classified in one category or the other The Secretary of State's Memorandum,[1] which we understand reflects the views of the Government of Burma, suggests *that, where an area has never been formally declared a backward* tract and does not consist exclusively of hill districts, it is undesirable to withdraw it from the scope of Ministers and the Legislature, and that it should therefore continue to be regarded as a Partially Excluded Area only We cannot accept this suggestion, nor do we agree that the omissions of the past should necessarily be perpetuated in the future Such information as we have leads us to think that the Salween district should certainly become an Excluded Area With regard to the others, our information is not precise enough to enable us to make detailed recommendations; but we are of opinion that the Government of Burma should be requested to examine the whole question *de novo* and to advise whether, notwithstanding the present legal position, any districts which it is proposed should form part of a Partially Excluded Area are of such a character that their notification as backward tracts would be justified, if the matter were at large

Difference between Excluded Areas and rest of Burma one of kind and not of degree

460 *We have no doubt at all that the Excluded Areas should* remain under the exclusive administration and control of the Governor The Joint Memorandum of the Burman Delegates expresses the opinion that there should be no wholly Excluded Areas except those included in the Shan States Federation, but the arguments advanced in support of this opinion seem to us to misapprehend entirely the reasons which underlie the proposals in the Burma White Paper We do not think that we can do better than quote a passage from the Secretary of State's Memorandum, with which we find ourselves in complete agreement

> "It is important to remember that the word 'backward,' which is the technical term used to denote areas notified under Section 52A of the Government of India Act, 1919, may lead to a serious misunderstanding of the position It suggests that the difference between these tracts and the ordinary districts is one of degree of development which will necessarily tend to disappear with time This is far from the whole truth The existing backward tracts are *hill districts lying on the north,* west and east of Burma, and resembling in their general characteristics the backward tracts along the eastern border of Assam Their inhabitants, mainly Kachins, Chins and Shans, differ radically from those of the plains in race, religion, law, customs, and language, and most of these differences will be bridged, not by a simple process of development, but by the much slower and more difficult process of abandonment of their

[1] *Records* [1933–34], A1, p. 95

existing culture. It is the absence of common outlook and aspirations which is perhaps the main factor militating against the assimilation of the backward tracts in the hills in the political institutions of the plains The history of the relations between the backward tracts and the plains is one of opposition and hostility and the main reason for undertaking the administration of the tracts was the protection of the plains. Such feelings of antipathy die slowly in remote places and the inhabitants of the backward tracts are still devoid of any real sense of community political or otherwise with the plains Further the inhabitants of the backward tracts are ignorant of conditions in the plains and those of the plains are equally ignorant of conditions in the tracts. It is true that since the annexation of Upper Burma civilising influences have been at work The Kachins come down with confidence from their hills to market in the villages of the plains and mix more freely with the plainsmen and in some areas they have come under the influence of missionaries Kachins and Chins also are recruited to the Burma Rifles and Burma Military Police. But the fact remains that the plains and the backward tracts are different worlds with no adequate mutual knowledge and no adequate contact by which such knowledge may be readily diffused. The backward tracts in Burma are admittedly not ripe for representative institutions and have not it is believed shown any desire for them. The time will not be ripe for such a change until conditions in the tracts have undergone a fundamental change and until their inhabitants have learned to feel that they are part of a larger political whole Such a state of affairs is not likely to come to pass within any period that can at present be foreseen. Meanwhile the Provincial Legislature, however capable of legislating for the plains which it knows and represents is clearly not qualified to legislate for people it does not represent and for conditions of which it has no adequate knowledge. Added to this is the consideration that law in the backward tracts is mainly customary law supplemented by simple regulations issued under Section 71 of the Government of India Act—a very refractory substance for amalgamation with Acts of the Legislature. [1]

The Federated Shan States.

461 The Joint Memorandum of the Burman Delegates draws attention to certain financial arrangements in connection with the Federated Shan States and recommends that the contribution from Burma revenues to those States should cease and that the States should be required to pay their share of the cost of defence and general administration We think that the Delegates are under some misapprehension in this matter for we are informed that no such contribution has been made for the last two years and that there

[1] Records [1933–34] A1 p 97

is no intention of renewing it. We understand the intention to be that after separation the Shan States should be credited with a share of receipts from customs dues proportionate to the consumption of dutiable articles in their area, and with a similar share of income tax and other taxes which are at the present time central sources of revenue, but which will, after separation, be levied in Burma for the purposes of the local Government. The Shan States will in their turn contribute a fixed sum representing the share fairly allocable to them of central expenditure which will in future be borne by Burma, and of the cost of general administration from which the States derive benefit equally with the rest of Burma This appears to us a reasonable arrangement We should perhaps explain that the Shan States, though British territory, are a quasi-autonomous area administered by the Shan Sawbwas or Chiefs under the general supervision of the Governor, and that since 1922 they have been formed into a species of Federation for certain common purposes The finances of the Federation have always been kept distinct from the provincial finances of Burma, and we think it desirable that this arrangement should continue Special provision for this purpose will, we think, be required in the Constitution Act, and we are of opinion (1) that the share of revenue which the Shan States are to receive, as indicated above, and the contribution which they are to make to Burma revenues, should be fixed from time to time by Order in Council, (2) that the States' share of revenue, when fixed, should be a non-votable head of expenditure appropriated for the purposes of the administration of the States, and (3) that the contribution of the States should not be paid directly to Burma revenues but allocated to the Governor for the same purposes The Burman Joint Memorandum suggests that the financial settlement between the Shan States and Burma (i e the determination of the share of revenue and of the States' contribution) should be referred to an impartial tribunal and should not be left to be dealt with by the Governor We understand that in fact a committee of three officers, one representing Burma, one the Shan States, with an independent chairman, has already been set up for the purpose of advising the Governor on this matter, and in these circumstances we do not think that any useful purpose would be served by the appointment of an extraneous tribunal

Fina[ncial] arran[ge]ment[s]: Excl[uded] Area[s]

462 We understand the Burman Delegates also to suggest that the financial arrangements for other Excluded Areas should be the same as those for the Shan States, that their expenditure should be met out of their own revenue, and that they should have a budget separate from the general Burma budget There does not seem to us to be any true analogy between the two cases The Shan States are a compact area, and for all common purposes form a single organised administrative unit, this cannot be said of any of the other Excluded Areas We think therefore that the Burma White Paper rightly proposes that the money required for the

administration of those areas apart from the Shan States should come from Burma general revenues and should be a non votable head of expenditure We may however draw attention to the fact that the forests in the Excluded Areas are at the present time and will continue to be under the administration of the Forest Department which since 1923 has been one of the transferred departments and the Excluded Areas make a substantial contribution through this channel to the general revenues of Burma We think that the restrictions on the powers of the Legislature both in regard to the application of enactments passed by it and in regard to questions and resolutions which we have recommended elsewhere in regard to similar areas in British India should apply in regard to the Excluded Areas and Partially Excluded Areas of Burma.

Karenni States and Namwan.

463 We have mentioned previously the Karenni States, an area of 4 000 square miles with a population of 64 000 which lies on the eastern border of Burma and is not British territory There is also a small non British enclave known as the Assigned Tract of Namwan which is held on a perpetual lease from China in order to facilitate frontier transit questions It is proposed that these two areas shall be treated on the same footing as Excluded Areas and that the trifling sums required for administrative purposes in connection with them shall be treated as expenditure on an Excluded Area. In view of the smallness of the areas involved this seems a convenient arrangement but we assume that since they are not British territory it will still be necessary to legislate for them by means of Foreign Jurisdiction Act procedure

(b) *The Public Services*

Proposals generally the same as for Indian Services.

464 The proposals in the Burma White Paper[1] on this subject are substantially the same *mutatis mutandis* as those in the case of India, and we consider that the recommendations which we have made in respect of the Public Services in India[2] should similarly apply *mutatis mutandis* in respect of Burma. In the following paragraphs therefore it is only necessary to draw attention to one or two special points The services in Burma which will in future correspond to the Indian Civil Service and the Indian Police will necessarily have different designations but present members of the Indian Civil Service who are serving in Burma have informed us of their desire to remain members of the Indian Civil Service seconded for service under the Government of Burma and to retain all the rights and privileges of that service If we correctly understand this request to mean that the officers in question desire that though no longer subordinate in any degree to the Governor-General of India in Council they should still be entitled to describe themselves as members of the Indian Civil Service to which they were in fact recruited we see no objection to acceding to their desire As

[1] Burma White Paper Proposals 84–99

[2] *Supra* para. 274–312.

regards the request to retain the rights and privileges of that Service, we note that the Burma White Paper proposes, rightly in our opinion, that officers serving in Burma who were appointed by the Secretary of State shall be protected in existing rights and that the Secretary of State shall be empowered to award such compensation as he may consider just and equitable for the loss of any of them. In the case of Central Service officers now serving in Burma, it is proposed that those who were recruited by the Government of India for service in Burma alone should be compulsorily transferred to the service of the Government of Burma, but that those who were recruited either by the Secretary of State or by the Government of India without special reference to service in Burma should only be liable to transfer to the Government of Burma with their consent and the consent of the authority who appointed them. This seems a reasonable distinction to draw, and we approve it.

Ratios of European and Burman recruitment

465. There is a matter of importance to which it will be convenient to refer at this point, namely, the principles on which recruitment to the Services, which in Burma after separation will correspond to the All-India Services, should be based. The Statutory Commission[1] when recording in general terms its views as to the Government of a separated Burma, laid great stress on the importance of building up these Services in the tradition of the All-India Services which they will replace, and said "The pace of Burmanisation must be decided on its merits." The ratios of European and Indian recruitment to the Indian Civil Service and Indian Police which were approved in 1924 on the recommendation of the Lee Commission were designed to produce an equality of Europeans and Indians (in which term Burmans are included for this purpose) for India as a whole, including Burma, by 1939 in the Indian Civil Service and by 1949 in the Indian Police. The basis of calculation was an All-India average, and it has always been recognised that whereas by the dates mentioned there will be more Indians than Europeans in those Services in some Provinces, in others there will be fewer. Burma falls in the latter category. From figures which have been laid before us showing the change in ratio in the Indian Civil Service in Burma during the last decade, it is clear that an equality of Europeans and Burmans is unlikely to be attained by 1939; nor, we are informed, is equality likely to be attained in the Indian Police in Burma by 1949. Any attempt to expedite the attainment of such equality by sacrificing the standard required of recruits would be destructive of the principle on which the Statutory Commission laid such emphasis, and might well be disastrous to Burma. We are of opinion that the proportion of Europeans and Burmans in the Services which in a separated Burma will take the place of the Indian Civil Service and the Indian Police will be a relevant consideration in deciding when the projected enquiry[2] into the question of future recruitment should take place.

[1] Report, Vol II, para. 225.
[2] Burma White Paper, Proposal 93; cf. *supra* para 298.

for Burma and we wish to endorse the opinion held by the Statutory Commission in the passage cited that in the meantime the important thing in Burma s interest is to preserve the standard of recruitment without too close a consideration for the early attainment in Burma of what was no more than an average figure calculated for the whole of India without strict regard to differing conditions in differing Provinces

Burma Frontier Service.

466 Burma has one Service which has no exact counterpart in India, viz. the Burma Frontier Service. This is now controlled and recruited by the Local Government but it includes certain appointments the incumbents of which enjoy rights guaranteed by the Secretary of State We approve the proposal in the Burma White Paper that this Service should be recruited and controlled by the Governor in his discretion since most of the officers who belong to it would be serving in Excluded Areas under the control of the Governor [1]

Medical and Superior Railway Services.

467 When the Burma White Paper was first published the question of continued recruitment by the Secretary of State to the Medical and the Railway Services was still under examination. We understand however from the subsequent Memorandum submitted to us by the Secretary of State that as regards the Railway Services the intention now is that the proposed statutory Railway Board for Burma shall, in conjunction with the Public Service Commission control recruitment [2] We have already recommended that recruitment for the Railway Service in India should be in the hands of the new Railway Board and we see no reason why the same principle should not be applied also in the case of Burma. As regards the question of recruitment to the Medical Service we are informed that this matter is still under consideration and we have not sufficient information before us to make any considered recommendation but we are disposed to think that for the time being some recruitment by the Secretary of State of European medical officers must continue

The Forest Service.

468 We desire to draw attention to what we have already said on the subject of the Forest Service in India and the need for the co-ordination of research.[3] Our recommendations with regard to the Forest Service in the Indian Provinces are not of course applicable as they stand to the Forest Service in Burma but we hope nevertheless that arrangements may be made whereby the Central Institute for Research and the Training College at Dehra Dun will be available for entrants from Burma. We hope too that nothing will be done which might exclude the possibility of an interchange of officers between the Forest Services of Burma and India and we refer in this connection to certain of the recommendations of the Burma Sub-Committee of the First Round Table Conference

[1] Burma White Paper Introd. para. 22.
[2] Records [1833-34] A2 p 11
[3] *Supra* paras. 305-6

The Public Service Commission

469. It is proposed that there should be a Public Service Commission for Burma[1] This we regard as an essential provision, and we think that the Constitution Act should in this respect follow the Indian model[2]

Anglo-Indians and Anglo-Burmans

470 This is a convenient point at which we may refer to questions connected with the domiciled community, including Anglo-Indians and Anglo-Burmans, in respect both to education and to their fitness for appointments in the various Services—the latter depending very greatly on the efficiency of the former. Owing to the fact that the progress of English education among the Burmese was far slower than in India, Anglo-Indians are still to be found in some of the higher posts in the Provincial and subordinate Services in Burma, in the teaching profession, in the higher clerical posts, as well as in the Central Services still under control by the Government of India Over the whole Province the recent census shows that there are altogether 19,200 Anglo-Indians, of whom just over half are concentrated in Rangoon Hitherto their chief competitors have been Indians imported from India, and not Burmese at all, and it is obvious that any rapid drop in the number of Anglo-Indians employed in the Land Records and Excise Departments, as well as in the present Central Services which will be transferred to the control of the Government of Burma, would inflict an unmerited blow on this community, for they would not merely lose these posts but also the means which have enabled them to pay for the education of their children It is important therefore for this, among other reasons, that the standard of European education should be maintained In India, few Indian parents wish to send their children to Christian schools for European and Anglo-Indian children, but for some years past Burmese parents have shown an increasing liking for schools of this kind, and the percentage of children of other races who have been admitted into these schools has increased considerably in the last ten years The teachers in these schools have to be paid higher salaries, and they fulfil the natural wish of European and Anglo-Indian parents that their children should be brought up in a Christian school and taught by teachers whose mother-tongue is English If, therefore, pupils of other races and creeds should, under the new Constitution, be further increased, the whole character of these institutions will be practically destroyed It was represented to us that the Anglo-Indians felt that the tests imposed upon Anglo-Indian children in the matter of proficiency in Burmese tended to be too severe upon children whose mother-tongue was English, and that they were thereby prejudiced in the matter of becoming qualified for employment in the Public Services These are matters upon which it is not possible for us to enter in any detail, but we consider that both the education and the employment of Anglo-Indians should engage the special attention of the Governor in order that this

[1] Burma White Paper, Proposals 100–104
[2] *Supra*, paras 313–4

deserving class should not be subjected to any handicaps either in the quality of their education or their eligibility for posts in the Government service. It would further be necessary for regulations to be made laying down the percentage of appointments in Railways, Posts and Telegraphs and the Customs Service which could fittingly be reserved for members of the Anglo-Indian community

(c) *Commercial and other forms of discrimination*

Discrimination as between Burma and India.

471 In so far as this is a matter between the United Kingdom and Burma the proposals in the Burma White Paper supplemented by a subsequent Memorandum submitted to us by the Secretary of State [1] are the same as those in the case of India and we approve them subject to the general application to the case of Burma *mutatis mutandis* of the modifications which we have made in the corresponding proposals originally submitted to us in relation to India. In particular we recommend that there should be imposed on the Governor of Burma an additional special responsibility corresponding to that which we have recommended[2] should be imposed on the Governor-General of India for the prevention of discriminatory or penal treatment of imports from the United Kingdom. The Burma White Paper and the Secretary of State s Memorandum however, deal also with the question of discrimination as between India and Burma after the separation of the two countries and this raises certain problems of its own.

Penal discrimination against imports to and from Burma and India.

472 The general principle underlying the proposals submitted to us in this regard is that inasmuch as the association between India and Burma in the last 50 years has been broadly of a similar nature to that which has been built up over a longer period between the United Kingdom and India Indians should be afforded in Burma generally the same measure of protection in regard to their business avocations and commercial undertakings as we have recommended for United Kingdom subjects We think that this is right Pursuing this principle we think that the additional responsibility which as we have mentioned in the preceding paragraph should be laid upon the Governor to protect imports into Burma from the United Kingdom from penal or discriminatory treatment should extend to the protection of imports from India into Burma. And in order that Burma should not be exposed or feel that she is exposed by this recommendation to unequal treatment in this respect we think that reciprocally the special responsibility with which the Governor-General of India is to be charged under our recommendation should extend to the case of the products of Burma imported into India

[1] Records [1933-34] A2, p. 1
[2] *Supra* para. 345

Position of Indians in Burma.

473 The Memorandum to which we have referred deals also with a particular problem affecting the right of entry of Indian subjects into Burma It points out that there are in Burma over 1,000,000 persons either domiciled in India or originating from some Indian Province Some are in the permanent service of the Government, but the greater number are labourers who only intend to stay in Burma for a few years and who by accepting smaller wages tend to oust the indigenous labourer and to lower his standard of living Others are Indian money lenders who advance money on the security of agricultural land and crops, and whose operations, especially in times of depression, are such as to bring about an extensive transfer of ownership from an indigenous agricultural population to a non-indigenous and non-agricultural class It is clear that in these circumstances it would be unreasonable to include in a new Constitution for Burma provisions which would in effect give to all persons domiciled in India an unrestricted right of entry into Burma , and it is accordingly proposed that it should be competent for the Burma Legislature to enact legislation restricting or imposing conditions of entry into Burma in respect of all persons other than British subjects domiciled in the United Kingdom We think that this is right, but we agree with the further proposal which is made by the Secretary of State that, with a view to preventing the imposition of vexatious or unreasonable restrictions or conditions for the entry of Indians of good standing into Burma, the introduction of any legislation regulating immigration into Burma should be subject to the Governor's prior consent Nevertheless, we hope that these matters will ultimately come to be arranged between India and Burma on a conventional basis, and we refer to earlier observations which we have made on this aspect of the subject We have also expressed the opinion elsewhere that it may be desirable that any temporary Trade Agreement made between the existing Governments of the two countries with a view to tiding over the difficult period immediately after separation, when the two new Governments will probably be too fully occupied with other matters to enter into a long and intricate negotiation, should also include provisions relating to emigration and immigration

Existing restrictions.

474 There are certain legal restrictions in force at present on the right of persons of non-Burman birth or domicile to compete for certain public appointments or to qualify for the exercise of certain professions , and it is right that these should be retained As regards the future, the power of the Burma Legislature to impose conditions or restrictions on entry into Burma should prove a sufficient safeguard Subject to the above modifications, we are of opinion that the question of discrimination as between India and Burma should be dealt with on the same lines as that of discrimination between India and the United Kingdom But the separation of Burma from India will create a special category of persons in Burma of United Kingdom domicile for whose protection in India provision will, we think, require to be made in the Constitution of India rather

than that of Burma. We refer to the case of companies established already in Burma with United Kingdom personnel and United Kingdom capital Such companies have established themselves in Burma as a Province of British India and we think that it would evidently be inequitable if after the separation of Burma they are in a less favourable position in respect of their operations in British India than a company established at the same time and under the same conditions in say Bombay or Bengal

Medical qualifications.

475 As regards professional qualifications other than medical we have nothing to add to what we have already said in the case of India. As regards medical qualifications the position is different. A local Burma Act at present entitles any person holding a British or Indian medical qualification to be enrolled on the Medical Register in Burma but also empowers the Burma Medical Council to refuse to register any practitioner who holds only a qualification conferred in a Dominion or foreign country which does not recognise Indian medical degrees The recent action by the General Medical Council to which we have referred elsewhere in withdrawing their recognition of Indian medical diplomas did not affect Burma specifically since we under stand that at that time there was no authority in Burma by which such diplomas were granted but we are informed that diplomas are now granted by the University of Rangoon. The Indian Medical Act 1933 which sets out the Indian diplomas which entitle their holders to be placed upon the Indian register does not include among them any diploma granted in Burma but contains provisions enabling Rangoon diplomas to be included in the list if the Indian Medical Council are satisfied after investigation that the standard of proficiency prescribed by the University of Rangoon is adequate According to our information however the procedure prescribed by the Act will take some time and it is uncertain when the Rangoon diploma will in fact be admitted to the list and in these circumstances the position is one of ome doubt and obscurity especially as the Indian Act will obviously require some modification in its application to Burma after the separation of the two countries

Suggestions for future.

476 We think that all persons at present practising medicine in Burma by virtue of a United Kingdom or Indian qualification ought in any event to have that right assured to them [1] As regards the future we hope that it will eventually be found possible by means of reciprocal arrangements between the General Medical Council and the Indian Medical Council on the one hand and the Burma authorities on the other to arrive at a solution satisfactory to all concerned. In the meantime we think that statutory provision should be made to secure to holders of United Kingdom and Indian medical qualifications which are recognised by the General Medical Council the right to be enrolled on the Medical Register in Burma. The precise form which the provision should take will require

[1] Cf *supra* para. 358.

examination, but we think that reciprocal arrangements should be made by which the medical degrees granted by Rangoon University, if and when recognised by the Indian Medical Council and the General Medical Council, would receive a similar measure of protection in India and in the United Kingdom to that which we think suitable for United Kingdom and Indian qualifications in Burma

(d) *The Railway Board*

Proposals for a Railway Board

477 The Secretary of State has furnished us with a Memorandum containing proposals for the constitution of a Railway Board to manage the Burman railways after separation [1] This follows in its main outlines the proposals which we have already discussed for a Railway Authority in India, but the problem is a very different one in Burma, where the railway system consists only of some 2,000 miles of railway, and where there are no such complications as arise in India from the existence of company-owned railways or railways belonging to Indian States Accordingly, while the Indian Railway Board is more correctly described as a Railway Authority, the Railway Board in Burma is intended to be, in the words of the Memorandum, "a Board of Directors for the one railway system owned by the State" Agreeably with this conception, it is proposed that the chief executive officer of the railways shall be ex-officio President of the Board

Modifications suggested

478 We agree generally with the proposals in the Memorandum, subject to the following modifications We do not think that the Financial Adviser should be a member of the Board, for the same reasons which in our view make it undesirable that he should also be one of the Governor's Counsellors, since his duty and interest might at times be in conflict We think, nevertheless, that there should be a member of the Board with special financial experience Secondly, it has been represented to us that the proposed ineligibility for membership of the Board of persons who have contractual relations with the railways would in the case of Burma unduly restrict the field from which suitable members might be selected We are informed that the Government of Burma recognize the force of this contention, and suggest the inclusion of provisions similar to those which are to be found in the Rangoon Port Act, the effect of which is to make a *personal* interest in a contract a disqualification either for membership or for participation in a discussion of matters relating to such a contract This suggestion merits, we think, favourable consideration Thirdly, it seems to us that the Railway Board in Burma ought to be in a position to begin its operations contemporaneously with the establishment of the new Government, and that legislation for this purpose will therefore be necessary before

[1] Records [1933–34], A2, p 7

the separation of the two countries. It would obviously be inappropriate for the present Legislature in India to enact such legislation and we think therefore that it must be enacted in the Constitution Act itself though it may well be found convenient to leave some of the detailed provisions to be prescribed by Order in Council.

(e) *Constituent powers the Judiciary Audit and Auditor General Advocate-General*

Constituent powers, etc.

479 The recommendations which we have made on these four subjects in the case of India[1] will we think be equally appropriate *mutatis mutandis* in the case of Burma But as Burma after separation will be a unitary State and will not be within the jurisdiction of the Indian Federal Court we think that an appeal should lie as of right to the Privy Council from the High Court in any case involving the interpretation of the Constitution Act We take this opportunity to record our opinion that the recommendations which we have made elsewhere[2] for the prescription of English as the language of the High Courts in India and the use of English for the conduct of business in the Indian Legislatures should apply equally to the case of the High Court and the Legislature in Burma As regards audit arrangements it is evident that Burma will require after separation her own audit system As regards Home Audit however it may well be found that the amount of Burma business transacted in London will not be sufficient to justify the appointment of a separate officer as Home Auditor and in that event we think that some arrangement should be made whereby the Auditor for Indian Home Accounts should also act in an agency capacity for Burma We think that liberty should be afforded in the Act for the new Burma Government to establish a High Commissioner of its own in London if it finds it necessary to do so but we foresee the possibility that the amount of business requiring to be transacted in London on behalf of the Government of Burma may be so small as not to justify at the outset the expense of establishing such an office and we think that it might be well to examine the possibility of the functions of such an official being undertaken by some other authority on an agency basis for the time being

(f) *The Secretary of State and his Advisers*

The Secretary of State.

480 The establishment of responsible government in Burma necessarily implies as in the case of India the disappearance in relation to Burma of the corporation known as the Secretary of State in Council. It follows that there should be a transference of the rights liabilities and obligations incurred by the Secretary of State in Council in respect of Burma to the appropriate authority to be established in Burma corresponding to the transference to the Federal or Provincial Governments in India which in an earlier passage we have suggested should be provided for in the Indian

[1] *Supra*, paras. 322–341 374–381 396–399 and 400–403
[2] *Supra* para 373

Constitution The question has been raised whether the Secretary of State for India should become in future the Secretary of State for India and Burma The Joint Memorandum of the Burman Delegates suggests that there should be a separate Secretary of State for Burma, or else that the Secretary of State for the Dominions should hold the office We are disposed to think that the Secretary of State for India should in future hold two separate portfolios, one as Secretary of State for India and one as Secretary of State for Burma, and we are of opinion that, though the two offices would be legally distinct, it is most desirable on practical grounds that they should be held by the same person There is, we are convinced, no real danger that the interests of Burma would be unfairly subordinated to those of India in the hands of a Secretary of State holding the double office

The Secretary of State's Advisers

481 The Secretary of State, as Secretary of State for Burma, ought, we think, to have a small body of Advisers, not more than two or three at the most, to advise him on questions concerning Burma, but our recommendation in the case of India that the Secretary of State should be bound in Service matters by the opinion of his Advisers or a majority of them would not be altogether appropriate in the case of so small a body, and it is for consideration whether, where Service matters are concerned, which are and will continue to be *ejusdem generis* in India and Burma, the India and Burma Advisers should not sit together and advise jointly

(g) *Financial adjustment between India and Burma*

Financial adjustment as a consequence of separation

482 It is clear that on the separation of the two countries there will have to be an equitable apportionment of assets and liabilities, including under the latter head the liability for loans and loan charges which are at present a liability either of the Secretary of State or of the Government of India The Burma White Paper contains no definite proposals as to the manner in which this apportionment is to be effected, but we assume that it will be necessary to appoint some impartial tribunal which will in the first place lay down the principles of the apportionment, leaving the application of those principles to be worked out in detail at a later date It will be necessary to include in the Constitution Act provisions giving the force of law in both countries to the award or awards issued from time to time by the tribunal It is also very desirable that its work should be well advanced by the time the new Government in Burma is established, and we think that steps should be taken for its appointment at as early a date as is reasonably practicable

FIRST APPENDIX

Proposals for Indian Constitutional Reform.

(Published originally as Cmd. 4268)

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THE PROPOSALS—(*continued*)—

PROPOSALS FOR INDIAN CONSTITUTIONAL REFORM

INTRODUCTION

The White Paper of December 1931

1 In December 1931 both Houses of Parliament adopted a motion expressing approval of the Indian policy of His Majesty s Government as announced to the Indian Round Table Conference and set out in Command Paper 3972. That policy stated in the broadest terms involved the prosecution of further inquiries and discussions with the object of finding a suitable basis for the conversion of the present system of government in India into a responsibly governed Federation of States and Provinces on the understanding that the responsible Government so established must, during a period of transition, be qualified by limitations in certain directions. These limitations commonly described by the compendious term safeguards, have been framed in the common interests of India and the United Kingdom.

2. Having pursued their further inquiries and discussions including a third session of the Round Table Conference His Majesty's Government are now in a position to indicate with greater precision and in fuller detail their proposals for an Indian Constitution and it is their intention, as indicated by the Secretary of State for India to the House of Commons on the 27th June last, to invite both Houses of Parliament to set up a Joint Select Committee to consider these proposals in consultation with Indian representatives and to report upon them. After this Report has been laid it will be the duty of His Majesty s Government to introduce a Bill embodying their own final plans.

The form and purpose of the present document

3 It should be made plain at the outset that although the proposals are set out below in the interests of clarity in the form of short paragraphs or clauses the language used in so describing them must not in general be taken as representing the language which would actually be used if they were presented in statutory form. Nor must it be assumed that the present proposals are in all respects so complete and final that a Bill would contain nothing which is not covered by this White Paper At the same time it is hoped that the Proposals read in the light of this Introduction will make clear the principles which His Majesty's Government have followed.

4 One further explanation of the scope of this document should be given. It is unnecessary for the present purpose for His Majesty s Government, in anticipation of the discussions in Parliament, to marshal and elaborate here the general arguments in justification of their Proposals. It is not sought in this document to do more than to explain their exact nature and intended effect.

The Federation of India

The processes involved in its formation

5 The conception of a Federation of States and Provinces, and the processes involved in its formation necessitate a complete reconstruction of the existing Indian Constitution these proposals are accordingly based on the assumption that the existing Government of India Act (which is a consolidation of the series of statutes relating to the government of India, the earliest of which dates from the 18th century) will be repealed *in toto* and will be replaced by the Act which will ultimately embody the decision of Parliament, and which is in the following pages referred to as the Constitution Act. The problems presented by the legal and constitutional reconstruction are briefly as follows.

6 Federation elsewhere has usually resulted from a pact entered into by a number of political units, each possessed of sovereignty or at least of autonomy, and each agreeing to surrender to the new central organism which their pact creates an identical range of powers and jurisdiction, to be exercised by it on their behalf to the same extent for each one of them individually and for the Federation as a whole India, however, has little in common with historical precedents of this kind In the first place, British India is a unitary State, the administrative control of which is by law centred in the Secretary of State —in some respects in a statutory corporation known as the Secretary of State in Council—in whom are vested powers of control over "all acts, operations and concerns which relate to the government or revenues of India", and such powers as appertain to the provincial Governments in India are derived through the Central Government by a species of delegation from this central authority and are exercised subject to his control It follows that the Provinces have no original or independent powers or authority to surrender

7 The States, on the other hand, though they are under the suzerainty of the King Emperor, form no part of His Majesty's dominions Their contact with British India has hitherto been maintained by the conduct of relations with their Rulers through the Governor-General in Council Moreover, since Parliament cannot legislate directly for their territories, the range of authority to be conferred upon the Federal Government and Legislature in relation to the States must be determined by agreement with their Rulers, and the States have made it plain that they are not prepared to transfer to a Federal Government the same range of authority in their territories as it is expedient and possible to confer upon it in relation to the Provinces The position will therefore necessarily be that in the Indian Federation the range of powers to be exercised by the Federal Government and Legislature will differ in relation to the two classes of units which compose it

8 For the purpose of meeting these conditions, it is proposed to set up a Federal Legislature, consisting of elected representatives of British India and of representatives of Indian States to be appointed by their Rulers, and a Federal Executive consisting of the Governor-General representing the Crown, aided and advised by a Council of Ministers, who will be responsible (subject to the qualifications to be explained later) to the Legislature so composed, and to endow these authorities with powers and functions in relation to British India and with such powers and functions in relation to the States as the States-members of the Federation will formally accept as being of full force and effect within their territories Full liberty will, of course, be reserved to the Crown to refuse to accept the accession of any State to the Federation if it is sought on terms incompatible with the scheme of Federation embodied in the Constitution Act

9 On the repeal of the present Government of India Act all powers appertaining and incidental to the government of British India will vest in the Crown, and the transition from the existing constitutional position, briefly indicated above, will be effected by making them exercisable on behalf of the Crown by the Governor-General, the Governors, and other appropriate authorities established by or under the Constitution Act The powers vested in the Crown in relation to the States, and now exercisable through the Governor-General of India in Council, except in so far as they are requisite for Federal purposes and the Rulers have assented to their transfer to the appropriate Federal authority for those purposes, will be exercised by the Crown's representative in his capacity of Viceroy, and these powers will be outside the scope of the Federal Constitution

10 The office of Governor-General of the Federation will be constituted by Letters Patent, and that document will set out the powers which the Governor-General will exercise as the King's representative, that is to say, the powers expressly conferred on him by the Constitution Act and such other

powers, not inconsistent with that Act, as His Majesty may be pleased to delegate to him. The Governor-General himself will receive a Commission under the Royal Sign Manual appointing him to his office and he will exercise and perform the powers and duties attaching to his office in such manner as may be directed by the Instrument of Instructions which he will receive from the King The same arrangements *mutatis mutandis* are contemplated in the case of the Governor of each Province

It is intended that the Viceroy shall in future be recognised as holding a separate office which will also be constituted by Letters Patent, and the latter will serve as the means of conferring on the Governor-General in the capacity of Viceroy the powers of the Crown in relation to the States outside the Federal sphere. With these the Constitution Act will not, of course be concerned

11 So far as British India is concerned the first step requisite in the transfer from a unitary to a federal polity is to define by Statute the jurisdiction and competence of the Federal and Provincial authorities respectively —or in other words to create Provinces with an autonomy of their own and to assign to them a defined and exclusive share of the activities of government. It is accordingly proposed to declare that the executive power and authority in each of the Governors Provinces is vested in the King and is exercisable by the Governor as the King s representative to constitute a Council of Ministers to aid and advise the Governor and a Legislature of elected representatives of the provincial populations to whom the Ministers will be responsible and to define the competence of this Legislature (and of the Federal Legislature) in terms of subjects some of which will be exclusively assigned to the Federal and Provincial Legislatures respectively while over others both Federal and Provincial Legislatures will exercise a concurrent jurisdiction, with appropriate provisions for resolving conflicts of laws

The Date and Conditions for the Inauguration of Federation

12 It will be apparent that the mere passing of the Constitution Act will not of itself suffice to bring the Federation into being Apart from the preparatory processes required in British India which cannot be completed until the Constitution Act is on the Statute Book, and which must inevitably occupy some time—the preparation of new and enlarged electoral rolls for the Provincial and Federal Legislatures and the demarcation of constituencies are matters in point—the final discussions with the States with regard to their Instruments of Accession and the execution of the latter cannot be undertaken until the Act which will be the basis of the Princes accession has been passed for until that time arrives the States will not be in possession of complete knowledge of the character and powers of the Federation to which they are asked to accede. So far as the States are concerned His Majesty s Government propose as the condition to be satisfied before the Federal Constitution is brought into operation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber shall have executed Instruments of Accession.

Prerequisites of a financial character to the inauguration of responsible Federal Government are dealt with in paragraph 32.

It is the intention of His Majesty s Government that the Federation shall be brought into being by Royal Proclamation but that the Proclamation shall not be issued until both Houses of Parliament have presented an Address to the Crown with a prayer for its promulgation.

13 At the same time His Majesty s Government do not contemplate the introduction of the new autonomous constitutions in the Provinces under conditions which will leave Federation as a mere contingency in the future.

It is probable that it will be found convenient, or even necessary, that the new Provincial Governments should be brought into being in advance of the changes in the Central Government and the entry of the States But the coming into being of the autonomous Provinces will only be the first step towards the complete Federation for which the Constitution Act will provide, and His Majesty's Government have stated that if causes beyond their control should place obstacles in the way of this programme, they will take steps to review the whole position in consultation with Indian opinion

Provision will accordingly be required in the Constitution Act for the period, however short it may be, by which Provincial autonomy may precede the complete establishment of the Federation The nature of the transitory arrangements contemplated for this purpose is explained in paragraph 202 of the Proposals

The Federal Executive

14 The executive power and authority of the Federation will be vested in the King and will be exercised by the Governor-General as his representative, aided and advised by a Council of Ministers* responsible to a Legislature containing representatives both of British India and of the States But whereas in the Provinces the Council of Ministers will be entitled, as will be seen from a later paragraph, to tender advice to the Governor on all matters which fall within the scope of provincial administration, other than the use of powers described by the Constitution Act as being exercisable by the Governor at his discretion, the transfer of responsibility at the Centre will not be co-extensive with the range of the Federal Government's activities Certain Departments, namely, those concerned with Defence, External Affairs and Ecclesiastical administration, are to be entrusted to the Governor-General personally, and these matters he will control in responsibility to His Majesty's Government and Parliament For example, the rights and conditions of service of the personnel of the Defence forces will continue generally to be regulated as at present In the exercise, moreover, of certain specific powers to be conferred by the Constitution on the Governor-General, and to be expressed as being exercisable at his discretion, the Governor-General will be entitled to act without seeking advice from his Ministers On other matters, Ministers will tender advice to the Governor-General and the Governor-General will be guided by that advice, unless so to be guided would in his judgment be inconsistent with the fulfilment of any of the purposes for which he will be declared by the Constitution Act to be charged with a "special responsibility," in which case the Governor-General will act, notwithstanding the advice tendered to him, in such manner as he deems requisite for the discharge of those "special responsibilities"

15 For the purpose of assisting him in the administration of the Reserved Departments the Governor-General will be empowered to appoint at his discretion not more than three Counsellors whose salaries and conditions of service will be prescribed by His Majesty in Council The Governor-General will not be restricted in any way in his choice of these Counsellors, the sole consideration will be to select the individual best suited, in the Governor-General's opinion, for the office, wherever he may be found The Counsellors will be *ex officio* members of both Chambers of the Legislature, though without the right to vote, they are not therefore included in the numbers mentioned in the following paragraphs

The Federal Legislature

16 The Federal Legislature will be bi-cameral, the two Chambers possessing identical powers, except that Money Bills and Votes of Supply will be initiated in the Lower Chamber, and that the range of the functions of the Upper

* For the method of appointing to the Council of Ministers, see Proposals, paragraph 14

Chamber in relation to Supply will be less extensive than those of the Lower Chamber (see paragraph 48 of the Proposals) Equality of powers necessitates arrangements made for the solution of deadlocks the arrangements proposed are set out in paragraph 41 of the Proposals.

17 The Lower Chamber or House of Assembly of the Federal Legislature will consist of a maximum of 375 members of whom 125 will be appointed by the Rulers of States-members of the Federation. The remaining 250 members will be representatives of British India and their seats will be allocated to the Provinces and to the several communities and interests in each province in the manner indicated in Appendix II The British Indian members will be directly elected.

18 The Upper Chamber or Council of State will consist of a maximum of 260 members of whom 100 will be appointed by the Rulers of the States-members of the Federation The British Indian members 150 in number will, for the most part, be elected by the members of each Provincial Legislature by the method of the single transferable vote An exception will be made in the case of those minorities (Europeans Anglo-Indians and Indian Christians) whose representatives in the Provincial Legislatures would be insufficiently numerous to provide the necessary quota to secure representation in the Upper Chamber The arrangements proposed for these minorities and the numbers of seats assigned to each Province are indicated in Appendix I Except for these three minorities the specific allocation of seats on a communal basis would thus be avoided It is however the intention of His Majesty s Government that Muslims should be able to secure one-third of the British India seats in the Upper House and if it is considered that adoption of proportional representation in the manner proposed makes insufficient provision for this end they are of opinion that modificaiton of the proposals should be made to meet the object in view

In addition the Governor-General will be empowered to nominate not more than ten members (not officials) thus providing an opportunity of adding to the Chamber a small group of the elder-statesman type

19 The allocation of the seats among the States-members of the Federation both for the Federal Assembly and Council of State is at present under discussion with Rulers His Majesty s Government are accordingly unable at the moment to put forward specific proposals But their view is that the detailed allocation of seats which will eventually be provided for in the Constitution Act should be based in the case of the Council of State on the rank and importance of the State as indicated by the dynastic salute and other factors and that in the case of the Lower Chamber it should be based *in the main* on population

The franchise for the Federal Legislature

20 Since the British Indian seats in the Upper Chamber of the Federal Legislature will be filled by indirect election by the Provincial Legislatures no question of franchise qualifications arises though certain specific property or other qualifications will be required in members of the Upper House

21 The franchise of the Lower Chamber of the Federal Legislature will for practical purposes, be the existing franchise for the present Provincial Legislatures. In Bihar and Orissa the qualifications will be changed but the character and numerical effect will be substantially as at present. In the Central Provinces, where the existing percentage of enfranchisement is unusually low an alternative franchise of the same character but on a wider scale has been worked out by the Local Government. The existing franchise in all provinces is essentially based on property In adopting it (with the modifications referred to above) as the franchise for the Lower Chamber

of the Federal Legislature it is proposed to supplement the property qualification by an educational qualification common to men and women, and, where necessary, by a differential franchise such as to produce an electorate of approximately 2 per cent of the population of the Scheduled Castes* (hitherto known as Depressed Classes) in every province, except in Bihar and Orissa, in which the general percentage of enfranchisement is lower than elsewhere, and in the North-West Frontier Province and Sind, where the numbers of the Scheduled Castes are negligible The ratio of women to men electors for the Federal Assembly will for practical purposes remain unchanged under the present proposals, although the number of women electors will be substantially increased and special provision will be made by the reservation of seats to secure the presence of women in the Assembly His Majesty's Government fully appreciate the importance of a large women's electorate for the Federal Assembly and their proposal to leave the ratio of electors at the point now suggested is made only after exhaustive discussion with the Indian authorities, and in view both of the administrative difficulties involved in any further increase and of the objections to a differential franchise based on education, by the adoption of which alone any substantial addition to the women's electorate could conveniently be made in present conditions Provision will also be made for an electorate for the seats to be provided for Commerce, Labour and other special interests in the Federal Lower Chamber

22 The details of the franchise proposed are set out in Appendix IV. It should be emphasised that pending preparation of an electoral roll these qualifications are inevitably to some extent stated in general terms, and that modifications of detail may be found necessary on various points once the preparation of the roll is undertaken Registration of claimants in respect of an educational qualification will, at any rate for the first two elections, be only on application by the potential voter † The effect of acceptance of the Proposals in question would be to enfranchise as voters for the Federal Legislature between 2 and 3 per cent of the total population of British India The gross total electorate would, so far as can be judged, amount to between 7 and 8 millions

Governor-General's relations with his Ministers

23 Although the Reserved Departments will be administered by the Governor-General on his sole responsibility, it would be impossible in practice for the Governor-General to conduct the affairs of these Departments in isolation from the other activities of his Government, and undesirable that he should attempt to do so, even if it were in fact possible A prudent Governor-General would therefore keep his Ministers and the advisers whom he has selected to assist him in the Reserved Departments in the closest contact, and, without blurring the line which will necessarily divide on the one hand his personal responsibility for the Reserved Departments, and, on the other hand, the responsibility of Ministers to the Legislature for the matters entrusted to their charge, he would so arrange the conduct of executive business that he himself, his Counsellors and his responsible Ministers, are given the fullest opportunity of mutual consultation and discussion of all matters—and there will necessarily be many such—which call for co-ordination of policy His Majesty's Government intend to secure the embodiment of this principle in appropriate terms in the Governor-General's Instrument of Instructions For example, they contemplate that the Instrument should contain a direction to the following effect "without derogation

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* The Castes in each Province scheduled as requiring special electoral protection are enumerated in Appendix VIII

† See Introductory Note to Appendices IV and V, paragraph 3

from your responsibilities you shall encourage joint deliberation between yourself, your Counsellors and your Ministers and in particular you shall make it your endeavour to secure that the views of your Ministers in relation to Defence expenditure shall be ascertained and duly weighed before the appropriations for Defence are laid before the Legislature The Instrument of Instructions will also formally recognise the fact that the defence of India must, to an increasing extent, be the concern of the Indian people and not of the British Government alone. At the same time it will make it clear without ambiguity that whatever consultation between the Governor-General and his responsible Ministers may take place upon matters arising in the Reserved Departments, the responsibility for the decisions taken is the Governor-General s and the Governor-General s alone

24 A different problem presents itself in regard to the Governor-General s relations with his Ministers outside the ambit of the Reserved Departments, *i.e* in the Departments which will be entrusted to the charge of Ministers responsible for the conduct of their administration of them to the Legislature. In this sphere Ministers as already explained will have a constitutional right to tender advice and the Governor-General will except to the extent and in the circumstances explained below be guided by that advice The problem is so to define the circumstances in which he will be entitled to act on his own exclusive responsibility His Majesty s Government consider that the most satisfactory course will be —

(*a*) the enactment of provisions in the Constitution Act laying down that the Governor General has a special responsibility not for spheres of administration but for certain clearly indicated general purposes and that for securing these purposes he is to exercise the powers conferred upon him by the Constitution Act in accordance with directions contained in his Instrument of Instructions and

(*b*) the insertion in the Instrument of Instructions *inter alia* of a direction to the effect that the Governor-General is to be guided by his Ministers advice unless so to be guided would in his judgment, be inconsistent with a special responsibility imposed upon him by the Constitution Act in which case he is to act, notwithstanding his Ministers advice in such manner as he judges requisite for the due fulfilment of his special responsibility

It will be apparent from what has been said in this and the preceding paragraphs that the Instrument of Instructions will assume a position of great importance as an ancillary to the Constitution Act, and His Majesty s Government propose that appropriate arrangements shall be made to secure to both Houses of Parliament opportunity to make to His Majesty representations for amendments or additions to or omissions from the Instructions.

25 It remains to indicate the matters or purposes in respect of which the Governor-General should be declared in accordance with the proposals in the preceding paragraph to have a special responsibility in relation to the operations of the Federal Government. It is proposed that they should be the following —

(i) the prevention of grave menace to the peace or tranquillity of India or of any part thereof
(ii) the safeguarding of the financial stability and credit of the Federation
(iii) the safeguarding of the legitimate interests of minorities
(iv) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests
(v) the protection of the rights of any Indian State
(vi) the prevention of commercial discrimination
(vii) any matter which affects the administration of the Reserved Departments

26 Before describing in detail the scope and purpose of the items in this list, it is desirable to explain the precise effect which is contemplated as the result of imposing upon the Governor-General these " special responsibilities " In the first place, it should be made clear that unless and until the Governor-General feels called upon to differ from his Ministers in the discharge of a " special responsibility," the responsibility of Ministers for the matters committed to their charge remains complete To take a concrete instance, it will clearly be the duty of Ministers rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment The intention of attributing to the Governor-General a special responsibility for the protection of minorities is to enable him, in any case where he regards the proposals of the Minister in charge of a department as likely to be unfair or prejudicial to a particular minority, in the last resort to inform the Minister concerned (or the Ministers as a body, if they generally support the proposals of their colleague), that he will be unable to accept the advice tendered to him Nor is it contemplated that the Governor-General, having been vested with " special responsibilities " of the kind indicated, will find it necessary to be constantly overruling his Ministers' advice The present proposals in general necessarily proceed on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise In the great bulk of cases, therefore, in day-to-day administration, where questions might arise affecting the Governor-General's " special responsibilities," mutual consultation should result in agreement, so that no question would arise of bringing the Governor-General's powers, in connection with his special responsibilities, into play

27 Reverting now to the list of " special responsibilities " in paragraph 25, the necessity for the items numbered (i), (iii) and (iv) follows as a matter of course from previous statements of His Majesty's Government's policy With regard to item (vii) it is apparent that if, for example, the Governor-General were to be free to follow his own judgment in relation to Defence policy only in regard to matters falling strictly within the ambit of the department of Defence, he might find that proposals made in another department in charge of a responsible Minister are in direct conflict with the line of policy he regards as essential for purposes connected with Defence, and consequently that the discharge of his responsibilities for Defence would be gravely impaired if he accepted the advice of the Minister responsible for the charge of the other department in question If, therefore, such a situation is to be avoided, it is impossible to secure the object in view otherwise than by expressing the Governor-General's " special responsibility " in some such terms as those indicated in item (vii)

28 As regards item (v), it should be explained that this is not intended to give the Governor-General any special powers *vis-à-vis* the States in relation to matters arising in the Federal sphere proper , the necessary powers having been transferred by the States in their Instruments of Accession, such matters will be regulated in accordance with the normal provisions of the Constitution Act Nor is it intended that the inclusion of this item should be regarded as having any bearing on the direct relations between the Crown and the States These will be matters for which the Constitution will make no provision and which will fall to be dealt with by the Viceroy, who will be the Governor-General in a capacity independent of the Federal organisation It may be, however, that measures are proposed by the Federal Government, acting within its constitutional rights in relation to a Federal subject, or in relation to a subject not directly affecting the States at all, which, if pursued to a conclusion, would affect prejudicially rights of a State in relation to which that State had transferred no jurisdiction Or, again, policies might be proposed or events arise in a Province which would tend to prejudice the rights of a neighbouring

State. In such cases it is evident that it must be open to the Crown, through the Governor-General or the Governor as the case may be, to ensure that the particular course of action is so modified as to maintain the integrity of rights enjoyed by the State by Treaty or otherwise.

29 Item (vi) is intended to enable the Governor-General to deal with proposals which he regards as likely to have discriminatory effects As regards legislative discrimination, detailed proposals will be found in paragraphs 122–124 of the Proposals. Any legislative measure Federal or Provincial which was inconsistent with those proposals would be invalid and could be challenged as such in the Courts and the Governor-General or the Governor as the case may be would be entitled to act otherwise than in accordance with his Ministers advice if he considered that such advice involved discriminatory action in the administrative sphere The Governor-General s powers would enable him to reserve any Bill on which he had doubts.

30 The second item in the list of special responsibilities deserves to be noticed at rather greater length since it involves the whole question of what have become known as financial safeguards Subject to the powers conferred upon the Governor-General by this responsibility and subject to what is stated below as regards the Reserve Bank, it is intended that the Finance of the Federation should like all other subjects except those included in the Reserved Departments, be entrusted to the Ministers. Unless occasion arises for the exercise of the Governor-General s special powers, it will therefore be for the Ministers and the Ministers alone to take decisions on all such matters as the means to be used for raising the necessary revenues for allocating expenditure in the responsible field and for the programme of external and internal borrowing

The service of certain obligations *e g* the service of the Debt, the salary of the Governor-General the salaries and pensions of Judges of the Federal Court, will be a charge on the revenues of the Federation other expenditure will be appropriated annually but certain Heads* of it, in particular the expenditure on the Reserved Departments will not require a vote of the Legislature.

31 The object of the Governor-General s special responsibility for the safeguarding of the financial stability and credit of the Federation is to confer on him powers to step in if the need should arise in the event of the policy of his Ministers in respect, for example of budgeting or borrowing being such as to be likely in the Governor-General s opinion to endanger seriously the provision of resources to meet the requirements of his Reserved Departments or any of the obligations of the Federation, whether directly or indirectly by prejudicing India s credit in the money markets of the world. The definition of this special responsibility is drawn in somewhat wide terms not in order to diminish the field of responsibility of the Ministers but owing the difficulty of giving a detailed specification of financial operations or measures which might on occasion endanger stability and call for the use of the Governor-General s powers. In order that assistance may be available to him in the discharge of this special responsibility the Governor-General will be empowered to appoint a Financial Adviser (without executive powers) whose services would also be available to the Ministers.

It will be seen that provision is made in paragraph 147 of the Proposals that the trustee status of existing India sterling loans will be maintained and will be extended to future sterling Federal loans.

32. The proposals relating to responsibility for the Finance of the Federation are based on the assumption that before the first Federal Ministry comes into being, a Reserve Bank, free from political influence, will have been set

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* See paragraph 49 of the Proposals for full list.

up by Indian legislation, and be already successfully operating The Bank would be entrusted with the management of currency and exchange His Majesty's Government and the Government of India are taking every step in their power to facilitate and expedite the establishment of a Reserve Bank on sound principles Some, however, of the conditions necessary for the successful establishment and operation of such a bank, depending as they do on world economic conditions, are not within their control The Report of the Committee of the third Round Table Conference on Financial Safeguards mentions the following as conditions to be fulfilled—"that the Indian Budgetary position should be assured, that the existing short-term debt both in London and in India should be substantially reduced, that adequate reserves should have been accumulated, and that India's normal export surplus should have been restored "

If a situation should arise in which all other requirements for the inauguration of the Federation having been satisfied, it had so far proved impossible successfully to start the Reserve Bank, or if financial, economic or political conditions were such as to render it impracticable to start the new Federal and Provincial Governments on a stable basis, it would, inevitably, be necessary to reconsider the position and determine in the light of the then circumstances what course should be pursued If, unfortunately, such reconsideration became necessary, His Majesty's Government are pledged to call into conference representatives of Indian opinion

33 Apart from the Reserved Departments, and the specified "special responsibilities " of the Governor-General outside the sphere of those Departments, there is a third category of matters in which the Governor-General will not be under any constitutional obligation to seek, or, having sought, to be guided by, ministerial advice For this purpose certain specified powers will be conferred by the Constitution on the Governor-General and will be expressed as being exercisable " at his discretion " In this category of " discretionary powers," the precise range of which it will be impossible exhaustively to foresee until the drafting of the Constitution Act has reached completion, His Majesty's Government anticipate that the following matters will be included —

(a) The power to dissolve, prorogue, and summon the Legislature,
(b) The power to assent to, or withhold assent from, Bills, or to reserve them for the signification of His Majesty's pleasure,
(c) The grant of previous sanction to the introduction of certain classes of legislative measures,
(d) The power to summon forthwith a joint Session of the Legislature in cases of emergency, where postponement till the expiration of the period to be prescribed by the Constitution Act might have serious consequences

Governor-General's relations with the Legislature

34 It is also a necessary corollary of what has already been said that the special powers to be conferred on the Governor-General for the purpose of enabling him to discharge his responsibilities must be similarly exercisable in his discretion To the foregoing must, therefore, be added—

(e) The power to take action, notwithstanding an adverse vote in the Legislature—to be dealt with more fully below,
(f) The power to arrest the course of discussion of measures in the Legislature—also dealt with below,
(g) The power to make rules of legislative business in so far as these are required to provide for the due exercise of his own powers and responsibilities

35 It is not in fact sufficient merely to regulate the Governor-General's relations with his responsible Ministers *i.e.* to regulate matters arising in discussion amongst the members of the executive Government. It follows from previous declarations by His Majesty's Government upon which these Proposals are based that the Governor-General must be given powers which will enable him effectively to discharge the responsibilities entrusted to him whether for the Reserved Departments or the special responsibilities indicated above if their discharge involves action normally lying within the functions of the Legislature to which the Legislature will not agree The general scheme underlying the Proposals is that wherever the Governor General's responsibilities for the Reserved Departments or his special responsibilities are involved he should be empowered not only to act without or as the case may be contrary to the advice of his Ministers but also to take action notwithstanding an adverse vote of the Legislature whether such a vote relates to the passage of legislation or to the appropriation of funds

36 But it will clearly be of importance to the fostering of the sense of responsibility in Ministers and Legislature alike that room should not be left for doubt whether in any given case the responsibility for the decision is or is not, that of the Ministers or of the Legislature as the case may be—in other words it is of importance that the special powers of the Governor General should be so framed as to make it plain that the responsibility for the results of their exercise lies upon him The necessity for the use of the Governor-General's legislative power may arise through the refusal of Ministers to be parties to a Bill or to provisions in a Bill which the Governor General regards as essential to the discharge of his responsibilities or where the Legislature rejects or fails to pass a Bill for which Ministers have accepted responsibility and which the Governor-General regards as essential or the Legislature may alter the Bill to a form which would fail to secure the object which the Ministers and the Governor-General have in view

37 The essential point to be secured in both contingencies is as already indicated that when the Governor-General decides that the discharge of his responsibilities necessitates a course of action to which he is unable to obtain the consent either of his Ministers or of the Legislature—or perhaps of both—the resulting enactment should not purport to be an enactment of the Legislature (as is the case with Acts which the Governor-General certifies under the existing Government of India Act) and further that its presentation to the Legislature should be brought about by the personal intervention of the Governor-General that his responsibility for it should be manifest, and that Ministers should be in no way compromised by his action either with their supporters in the Legislature or their constituencies in the country On the other hand, it would be undesirable to carry this principle to the logical extreme of placing all measures for which the Governor-General has himself to assume responsibility on the footing of Ordinances the enactment of which involves no reference to the Legislature at all. The Governor General's powers in this regard should therefore be such as to enable him to test opinion in the Legislature if he finds a majority there in support of his policy no question arises of using his special powers If he finds only a minority in the Legislature in favour of his policy he would at all events secure that measure of moral support, but he would carry out his policy on his own responsibility without compromising either the Ministers with their supporters in the Legislature or the latter with their constituencies It is accordingly proposed that measures enacted by the Governor General without the consent of the Legislature should be described as Governor General's Acts and that a special form of enacting words should be employed to distinguish them from Acts enacted by the Governor-General by and with the consent of both Chambers of the Legislature

38 The corresponding powers proposed for the Governor-General in the matter of supply are based upon the same principles The Budget will be framed by the Finance Minister in consultation with his colleagues and with the Governor-General The decision as to the appropriations required for the Reserved Departments and for the discharge of the functions of the Crown in relation to the Indian States will, of course, be taken by the Governor-General on his own responsibility, though he will be enjoined by his Instrument of Instructions to consult his Ministers before reaching any decision on appropriations for the Department of Defence Appropriations required for the non-reserved Departments will be the responsibility of Ministers But the proposals for raising revenue and for the appropriation of those revenues will be subject to the common constitutional rule (see paragraph 45 of the Proposals) that, as laid before the Legislature, they carry a recommendation from the representative of the Crown If the Governor-General regards his Ministers' proposals for appropriations as insufficient to enable him adequately to fulfil any of his " special responsibilities," he will be entitled to append to the Budget statement, when laid before the Legislature, additional proposals for appropriation under any head in respect of which he regards his Ministers' proposals as inadequate These additional proposals (if any) of the Governor-General will be distinguished as such in the Budget Statement, and whether they relate to non-votable or to votable Heads of expenditure the Legislature will not be invited to vote upon them, in other words, the appropriations which the Legislature will be invited to vote will be those proposed by the Ministry

39 After the Legislature has discussed the Budget as a whole and has voted upon those proposals for appropriations which are submitted to the vote, the Governor-General will be called upon to authenticate by his own signature the appropriations In authenticating those under the non-votable heads he will be entitled to include in his authentication the sums additional to those proposed by his Ministers under those Heads which he originally included in the budget statement, or if he thinks fit reduced sums He will be similarly required to authenticate the Grants as voted by the Legislature, and in so doing he will be entitled, if he regards this as necessary for the fulfilment of any of his " special responsibilities," to include in his authentication any sums not in excess of those by which the Legislature may have reduced the Grants submitted to it By this procedure the Ministry on the one hand, and the Legislature on the other, will be left free to exercise their respective responsibilities in the matter of supply—the Ministers, by accepting responsibility for proposals for appropriations so far as and no farther than they are prepared to hold themselves responsible to the Legislature, and the Legislature, by recording their agreement or disagreement with Ministers' proposals at the same time, the Governor-General, if he is unable to accept the proposals of his Ministers, or the decision of the Legislature, as consistent with the discharge of any of his special responsibilities, will be enabled to bring the resulting appropriations into accord with his own estimates of the requirements, and, if necessary, through his special legislative powers to secure that the Annual Finance Act provides him with resources which will cover the appropriations which he finally authenticates

The procedure of authentication by the Governor-General is proposed for a double purpose —

(i) to secure that the audit authorities should be concerned only with a single document as authority for all appropriations of revenue, by whatever legal procedure such appropriations have been made, and

(ii) to secure that the Governor-General does not make any appropriations under his special powers without the Legislature being made cognisant thereof

40 It will, in addition, be necessary to arm the Governor-General with a legislative power which is capable of immediate employment in emergencies either when the Legislature is not in session or if it is in session to meet circumstances which necessitate immediate action. It is therefore proposed to vest in him a power analogous to the existing Ordinance-making power Indeed in addition to such a power to be placed at the disposal of the Governor-General in his discretion for the express purpose of discharging his responsibilities for a Reserved Department or for carrying out a special responsibility His Majesty's Government are of opinion that a similar power must necessarily be placed at the disposal of the *Governor-General* acting with his Ministers, *i.e.* at the disposal of the Federal Government to meet cases of emergency when the Legislature is not in session the Ordinances *resulting* therefrom being limited in duration to a specified period unless previously revoked by the Legislature after its reassembly

41 Finally it is proposed that the Constitution should contain provision requiring the previous sanction of the Governor-General acting in his discretion to the introduction of any Bill affecting a Reserved Department, and certain other matters set out in Paragraph 119 of the Proposals

42 It is perhaps desirable to summarise very briefly the effect of these Proposals The intention is that the special powers of the Governor-General properly so described namely his power to obtain legislation and supply without the assent of the Legislature will flow from the responsibilities specifically imposed upon him and be exercisable only for the purpose of enabling those responsibilities to be implemented The responsibilities to be imposed on the Governor General by the Constitution will be of two kinds—an exclusive responsibility for the administration of the Reserved Departments and a special responsibility for certain defined purposes outside the range of the Reserved Departments. On the administration of the Reserved Departments Ministers will have no constitutional right to tender advice nor will they have any such right to *tender advice* on the exercise of any powers conferred upon the Governor General for use in his discretion On all other matters Ministers will be constitutionally entitled to tender advice and unless that advice is felt by the Governor General to be in conflict with one of his special responsibilities he will be *guided by it*. *If in* discharge of his responsibility for a Reserved Department, or of a special responsibility the Governor General decides that a legislative measure or a vote of supply to *which* the Legislature has not assented is essential his special powers will enable him to secure the enactment of the measure or the provision of the supply in question, but Ministers will not have any constitutional responsibility for his decision *

43 It remains only to explain that in so far as the *Governor* General or a Governor is not advised by Ministers the general requirements of constitutional theory necessitate that he should be responsible to His Majesty's Government and Parliament for any action he may take and that the *Con*stitution should make this position clear In the case of a Governor the chain of responsibility must necessarily include the Governor General.

44 The proposals indicated above have no reference to situations where a complete breakdown of the constitutional machinery has occurred. It is the intention of His Majesty's Government that the Constitution should *contain* separate provision to meet such situations should they unfortunately occur either in a Province or in the Federation as a *whole whereby the Governor* General or the Governor as the case may be, will be given plenary authority to assume all powers that he deems necessary for the purpose of carrying on the King's Government.

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* See footnote to Proposals paragraph 6

The Governors' Provinces

The Executive

45 The eleven provinces† named in the margin will become autonomous units, the government of each being administered by a Governor representing the King, aided and advised by a Council of Ministers responsible to the Legislature of the Province The Council of Ministers will be entitled to tender advice to the Governor on all matters which fall within the provincial sphere, other than the use of powers described by the Constitution Act as exercisable by the Governor at his discretion The Governor will be guided by the advice tendered to him by Ministers, unless so to be guided would be, in his judgment, inconsistent with the fulfilment of any of the purposes for the fulfilment of which he will be declared by the Constitution Act to be charged with a " special responsibility ", in which case the Governor will be entitled, and enjoined, to act, notwithstanding the advice tendered to him, in such manner as he deems requisite for the discharge of his special responsibilities

Madras,
Bombay,
Bengal,
The Unite
Provinces,
The Punja
Bihar,
The Centr
Provinces
Assam,
The North
West
Frontier
Province,
Sind,
Orissa

Governors' special powers and responsibilities

46 As indicated above, the scheme for the Governor-General's responsibilities and powers will be applicable in all respects to the Governor in relation to his Ministers and Legislature, with the following modifications In the provinces there will be no category exactly corresponding to the Reserved Departments of the Governor-General, though analogous arrangements are intended in order to provide for the administration of frontier areas in certain Provinces which, from the primitive nature of their populations and their general characteristics, will have to be excluded from the normal operation of the Constitution With this exception, the Governor's special powers will flow from, and be expressed as being required in order to enable him to discharge, his " special responsibilities " only.

47 As regards the " special responsibilities " of the Governors, these will be identical with those indicated in the case of the Governor-General, save that the first item on the list will necessarily be confined in scope to the Province, or any part thereof, and not extend, as in the case of the Governor General, to India as a whole, and that a special responsibility for the financial stability of the Province will not be imposed on Governors On the other hand, in the case of the Governors, it will be necessary to add to the list of " special responsibilities " an item relating to the execution of orders passed by the Governor-General As the Governor-General is to be charged with the general superintendence of the actions of Governors in discharge of their " special responsibilities," and if, as has already been proposed, he is himself to have imposed upon him a " special responsibility " for the prevention of grave menace to peace and tranquillity throughout the country, it follows that he must be in a position to ensure that his instructions to a Governor are acted upon, and consequently that the Governor must be in a position to act otherwise than on his Ministers' advice, if such advice conflicts with the Governor-General's instructions ‡ Finally, it will be necessary to impose upon the Governor a " special responsibility " for the administration of certain excluded areas, if, as seems probable, the arrangements for the administration of excluded areas involve their classification into two categories, one of which

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* With Berar, subject to conditions which are under discussion with His Exalted Highness the Nizam's Government

† It has not been possible to include in the Proposals any relating to Burma, as Burma has, as yet, made no choice between the alternatives of separation from India, with a Constitution as outlined in Command Paper 4004/1932 or inclusion as a Governor's Province in the Federation of India

‡ See also paragraph 55 of Introduction.

would be placed under the exclusive control of the Governor while the other is made subject to Ministerial control, but with an over-riding power in the Governor obtained in the manner explained in earlier paragraphs through his special responsibility

The special responsibilities dealt with in this paragraph have been discussed and reported on by the Round Table Conference at its third session Apprehension was expressed by some members at the first Round Table Conference that grave danger to the peace and tranquillity of a province might develop if the internal administration and discipline of the Police were not secured but this matter was not discussed at the third Round Table Conference in relation to the special responsibilities of the Governor His Majesty's Government propose to deal with it by inserting in the Instrument of Instructions of the Governor a direction that he should bear in mind the close connexion between his special responsibility for peace and tranquillity and the internal administration and discipline of the Police

48. The division of legislative powers between Centre and Provinces would no longer make appropriate the concentration in the hands of the Governor General of the power to legislate in emergency by Ordinance on provincial matters and this power will now be conferred on Governors also for the double purpose indicated in paragraph 40

The Provincial Legislature

49 The Provincial Legislatures will be enlarged to the extent indicated in Appendix III The allocation of seats and method of election for the Provincial Legislative Assemblies (Lower Houses) is in accordance with the provisions contained in what is generally referred to as His Majesty's Government's Communal Award of the 4th August last (Cmd. 4147/1932) The only modifications made are the adaptation of the figures necessary in view of the subsequent decision to establish Orissa as a separate Province and an alteration in respect of the representation of the Depressed Classes made in the circumstances explained below This Award was given by His Majesty's Government in order to remove the obstacle to further progress in the framing of a Constitution which was presented by the failure of communities in India themselves to reach agreement on the subject of the method and quota of representation of communities in the Provincial Legislatures

His Majesty s Government in the Award pledged themselves not to vary their recommendations to Parliament on this subject save with the mutual agreement of the communities affected and themselves to take no part in any negotiations initiated by the communities with a view to revision of their decision. One such variation has been made namely in respect to the arrangements for the representation of the Depressed Classes which have been modified in accordance with an agreement now known as the Poona Pact reached on the 24th September last between representatives of the Depressed Classes and of the rest of the Hindu community

His Majesty s Government stated in their Award that modification of the communal electoral arrangements might be made after 10 years with the assent of the communities affected, for the ascertainment of which suitable means would have to be devised.

The members of the Provincial Legislative Assemblies will be in all cases elected and no official will be eligible for election. In three Provinces* the Legislature will be bi-cameral in the remainder it will consist of a single Chamber But provision is made in the Proposals (paragraph 74) whereby subject to restriction, an Upper Chamber where it exists may be abolished or created where it does not exist The powers of provincial Upper Chambers will not be co-extensive with those of the Lower Chamber

* Bengal, the United Provinces and Bihar

The Provincial Franchise

50 Details of the franchise proposed in the case of the various Provincial Legislatures are given in Appendix V Here, as in the case of the franchise for the Federal Legislature, it should be emphasised that pending the preparation of an electoral roll the qualifications proposed are inevitably to some extent stated in general terms and that modifications of detail may be found necessary on various points once the preparation of the roll is undertaken The franchise in question is essentially based on property, supplemented by an educational qualification common to men and women alike, by a qualification for women in respect of property held by a husband, by provision directed to secure an electorate of approximately 10 per cent of the population of the Scheduled Castes* (hitherto known as Depressed Classes) in each province, except in Bihar and Orissa where the general percentage of enfranchisement is in the neighbourhood of 9 per cent only, and in the North West Frontier Province and Sind, where the numbers of the Scheduled Castes are negligible, and by provision of a special electorate for the seats proposed to be reserved for the representation of Commerce, Labour and other special interests Registration of claimants in respect of an educational qualification or of a woman qualified in respect of her husband's property will, at any rate for the first two elections, be on application by the potential voter only † The ratio of women to men electors will be approximately 1 to 7, as compared with approximately 1 to 21 at the present time

51 A precise statement of the numerical effect of the electoral qualifications proposed cannot be given pending the preparation of a provisional electoral roll So far as can be judged, however, these proposals, if accepted, would, in the typical case of Bengal, enfranchise some 7½ millions, or some 15 per cent of a total population of 50 millions In the case of Bombay the percentage to be enfranchised would probably be rather higher than in Bengal, in Madras and the United Provinces it would be approximately the same, in all other provinces it would be substantially lower, the lowest figure being reached in the case of Bihar and Orissa, with an electorate of some 3½ millions or rather over 9 per cent of the total population The general effect of acceptance of the proposals in question over all the Governors' Provinces would be an electorate in the neighbourhood of 14 per cent of the total population, or some 27 per cent of the adult population

A separate franchise will be devised for the two new provinces of Sind and Orissa In the case of Sind the franchise in question will probably be substantially identical in general character (subject to allowance for certain differences in local conditions) with that proposed for Bombay The new province of Orissa will be formed by accretions from the Central Provinces and Madras, as well as from the present province of Bihar and Orissa, and while the franchise will probably generally resemble that proposed for Bihar and Orissa, modifications of greater or lesser importance may in consequence be necessary in this case

Relations between the Federation and the Units

Powers of Federal and Provincial Legislatures

52 The conception of Federation and of that consequential change in provincial status commonly denoted by the expression "Provincial autonomy" will necessitate a complete departure from the existing system of concurrent jurisdictions—that is to say, there will be a statutory demarcation between the legislative competence of the Federal and Provincial Legislatures

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* The Castes in each Province scheduled as requiring special electoral protection are enumerated in Appendix VIII

† See Introductory Note to Appendices IV and V, paragraph 3

respectively and the assignment to each of an exclusive field of competence which the other will not be permitted save to the extent indicated below to invade.

53 Following the practice of other Federal constitutions the respective legislative fields of the Centre and of the Provinces will be defined in terms of subjects which will be scheduled to the Constitution Act. But while it will be possible to assign to the Federation and to the Provinces respectively a number of matters over which they can appropriately be charged with exclusive legislative jurisdiction examination has shown that this method cannot without inconvenience be so employed as to exhaust the entire field of potential governmental activity and that there are some matters in respect of which while some measure of uniformity of law may be necessary variation of detail to meet the local conditions of the Provinces is no less necessary It will consequently be necessary to schedule certain subjects whereon both Federal and Provincial Legislatures will enjoy concurrent powers the exact nature and effects of which will be seen from paras 111 112 and 114 of the Proposals

Illustrative lists of the exclusively Federal exclusively Provincial, and concurrent subjects which do not purport to be complete or final are appended. (Appendix VI)

54 Certain matters will be placed outside the competence altogether of both Federal and Provincial Legislatures namely legislation affecting the Sovereign or the Royal Family the sovereignty or dominion of the Crown over any part of British India, the law of British nationality the Army Act, the Air Force Act and the Naval Discipline Act and the Constitution Act itself. As regards the Army Air Force and Naval Discipline Acts, the Indian Legislatures will be debarred from legislating in such a way as to interfere with the operation of these Acts in so far as they operate in India, while at the same time it is intended to preserve the existing powers* of the Central Legislature in India to extend the provisions of these Acts with or without modification to members of Forces raised in India. Apart from a complete exclusion of jurisdiction in regard to these matters it is proposed to place upon the competence of the new Legislatures a limitation, taking the form familiarised by the provisions of the existing Act, whereby the Governor-General's—in some cases the Governor's—previous sanction to the introduction of certain specified classes of measures will be required. The proposed classification for this purpose will be found set out in paragraphs 119 and 120 of the Proposals. It will of course, be made clear (paragraph 121) that the grant by the Governor-General or by a Governor of his prior consent to the introduction of a measure under this Proposal is not to be taken as fettering his judgment, when the time comes if the measure is passed, for his decision as to the grant or withholding of his assent or the reservation of the measure for the signification of His Majesty's pleasure

One further specific limitation on the powers of the Legislature which has already been mentioned in paragraph 29 should be referred to again in the present context, namely the provisions proposed which will render *ultra vires* certain forms of discriminatory legislation.

55 The administrative relations between the Federal Governments and the Units are dealt with in paragraphs 125–129 of the Proposals. Provision is made in para. 125 of the Proposals for securing not only that due effect is given within the Provinces to Acts of the Federal Legislature which apply to them, but also that the Provincial Governments shall give effect to directions

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* As provided in section 177 of the Army Act, section 177 of the Air Force Act and as regards the Naval Discipline Act, in section 66 of the Government of India Act.

issued by the Federal Government in relation to any matter which affects the administration of a Federal subject in the executive sphere of the Province. The latter provision will cover all classes of Federal subjects, including those administered by the Reserved Departments In the latter class of subjects, the directions will, of course, be issued by the Governor-General

Allocation of Revenues between the Federation and the Units

56 It is intended that the division of resources between the Federation and the Units should be in accordance with the following scheme The method of treatment of taxes on income, which is of special importance, is described separately below The lists that follow are not intended to be exhaustive, but to indicate only the more important heads (For fuller lists, see Legislative Schedules in Appendix VI)

Sources of Revenue	Powers of Legislation	Allocation of Revenue
Import Duties (except on salt) Contributions from Railways and receipts from other Federal Commercial Undertakings Coinage profits and share in profits of Reserve Bank	Exclusively federal	Exclusively federal
Export Duties* Salt Duties Tobacco Excise Other Excise Duties except those on alcoholic liquors, drugs and narcotics	Exclusively federal	Federal, with power to assign a share (or the whole) to units
Terminal taxes on goods and passengers Certain stamp duties	Exclusively federal	Provincial, with power to the Federation to impose a federal surcharge,
Land Revenue Excise duties on Alcohol, Drugs and Narcotics Stamps (with certain exceptions) Forests and other Provincial commercial undertakings Miscellaneous sources of revenue at present enjoyed by the Provinces	Exclusively Provincial	Exclusively Provincial

Sources of taxation not specified in any schedule will be provincial, but the Governor-General will be empowered, after consultation with Federal and Provincial Ministers or their representatives, to declare in his discretion that any unspecified source of taxation should be federal

57 Taxes on income will be dealt with as follows —

Corporation tax† will be entirely federal Federating States will contribute under this head after 10 years All legislation regarding other taxes on income, except agricultural income, will be federal (subject to the right mentioned below of Provincial Legislatures to impose Provincial surcharges) Receipts from such taxation on officers in Federal service, and tax attributable to Chief Commissioners' Provinces or other Federal areas, will accrue to Federal Revenues The remaining net proceeds, other than receipts from the federal surcharges mentioned below, will be divided between the Federation and the Governors' Provinces, *x* per cent being assigned to the former, and the

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* In the case of export duty on jute, at least half the net proceeds must be assigned to the producing units

† There is at present in force in British India a super-tax on profits of companies which is usually referred to as Corporation tax

remainder to the latter Before a final recommendation can be made as to the basis of distribution of the Provincial share between the Provinces (and the basis on which tax will be attributable to Chief Commissioners Provinces) it will be necessary to complete further technical investigation which is now proceeding It is intended that percentage *x* should be not less than 25 per cent. and not more than 50 per cent.

Federal legislation regulating taxes on income which affects Provincial *Revenues as well as Federal Revenues is to be introduced* by leave of the Governor-General given in his discretion after consulting the Federal Ministry and Provincial Ministries

The Federal Legislature will also be empowered to impose surcharges on taxes on income the proceeds of which will be retained by the Federation. Federating States will contribute to the Federal Revenues a proportionate amount.

If however at the time when the Constitution comes into force any portion of the special surcharges on taxes on income imposed in September 1931 is still in operation, these will be deemed to be Federal surcharges but without liability on federating States to make any equivalent contribution

The Provincial Legislatures will be empowered to impose by their own legislation surcharges on taxes on personal income of residents in the Province the net proceeds going to the Province Collection would be carried out by Federal agency It is intended that an upper limit for such surcharges should be imposed, fixed at 12½ per cent. of the rates of taxes on income in force at any *time exclusive of federal surcharges.*

58. It is anticipated that in the early years of the Federation before there has been time to develop new sources of taxation (in particular Federal excises) the above system of distribution is likely to leave the Federation with inadequate resources It is accordingly intended to adopt a transitory provision by which the Federation can retain for itself a block amount out of the proceeds of income-tax distributable to the Provinces. This amount would be unchanged for three years and would diminish annually over the next seven years so as to be extinguished at the end of ten years This amount would be fixed after the investigation mentioned below

Power will be given to the Governor-General in his discretion but after consultation with the Governments concerned to suspend the programme of reduction if in his opinion its continuance for the time being would endanger the financial stability and credit of the Federation.

59 It is also anticipated that certain Provinces will be in deficit under the proposed scheme The North West Frontier Province will (as now) require a contribution from the Centre in view of its special position The new provinces of Sind and Orissa will not be able to start as entirely self-supporting units. Some of the existing Provinces notably Assam are likely to need assistance at least for a time It is intended that these Provinces should receive subventions from Federal Revenues. These subventions may be either permanent or terminable after a period of years.

60 It will be necessary at as late a stage as possible before the new Constitution actually comes into operation to review in the light of the then financial and economic conditions the probable financial position of both Federation and the Provinces. The Government of India and Provincial Governments will, of course be closely associated with any *enquiry for this* purpose. It is only in the light of such review that it will be possible to settle such matters as the amounts and periods of the Provincial subventions, the percentage of taxes on income to be permanently allocated to the Centre and the amount to be retained by the Federation temporarily out of the normal Provincial share of taxes on income. It is accordingly proposed that *the determination of such matters* should be by Orders in Council, the drafts of which would be laid before both Houses of Parliament for approval.

His Majesty's Government attach the highest importance to securing to the Federation adequate resources, without which the Federal Government cannot ensure the due fulfilment of liabilities upon which must depend the credit of India as a whole

A possibility which cannot be dismissed from consideration is that economic and financial conditions might on the eve of the inauguration of the new Constitution be such as to render it impracticable to supply the new Federal and Provincial Governments at the outset of their careers with the necessary resources to ensure their solvency If, after the review contemplated above, the probability of such a situation should be disclosed, it would obviously be necessary to reconsider the position, and it might, *inter alia*, be necessary to revise the federal finance scheme contemplated in these proposals

Attention may be drawn in this connection to the observations already made at the end of paragraph 32

61 The introduction of any scheme of Federal Finance is complicated by the existence of " contributions " paid by certain Indian States to the Crown, and by " immunities " which many of the States enjoy in respect of certain heads of prospective Federal Revenue as, for example, sea customs, salt, posts and telegraphs A full description of the very complex position will be found in the Report of the Indian States Enquiry Committee (Financial), Cmd 4103/32 It is proposed that the Crown should transfer the " contributions," so long as these are received, to Federal Revenues The intention is that these " contributions " should be abolished by a process of gradual reduction *pari passu* with the gradual reduction of the block amount retained by the Federation out of the share of Provincial Income Tax described in paragraph 58 above Abolition cannot, however, be effected by a uniform process The position of each State requires separate treatment depending on the existence of " immunities," since it is not intended to remit " contributions " save in so far as they are in excess of a still existing immunity Provision for the treatment of " contributions " on these lines will be made in the States' Instruments of Accession It is further proposed, as more fully explained in the Indian States Enquiry Committee Report, that as a counterpart to the remission of " contributions," credit should be given to certain States which ceded territory to the Crown under circumstances somewhat analogous to those in which other States agreed to pay " contributions," the basis of determining the amount of such credits being the net revenues of the territories at the time of cession Provision for such credits will have to be made in the Constitution Act It may be necessary to establish a Tribunal or other machinery for the purpose of determining the value of immunities (especially those subject to considerable fluctuations), where these have to be assessed from time to time for the purpose of setting them off against " contributions," or against any payments accruing from the Federation

The Judicature

The Federal Court

62 In a Constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on the one hand and the Legislatures and Executives of the federal units on the other, a Federal Court has always been recognised as an essential element Such a Court is, in particular, needed to interpret authoritatively the Federal Constitution itself The ultimate decision on questions concerning the respective spheres of the Federal, Provincial and State authorities is also most conveniently entrusted to a Tribunal independent of Federal, Provincial and State Governments, and such a Tribunal will, in any event, be required in order to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous

63 It is proposed that the Federal Court should have both an original and an appellate jurisdiction. Its original jurisdiction will be to determine justiciable disputes between the Federation and any Federal unit or between any two or more Federal units, *involving the interpretation of the Constitution* Act or any rights or obligations arising thereunder Its appellate jurisdiction will extend to the determination of appeals from any High Court or State Court on questions between whomsoever they may arise involving the interpretation of the *Constitution Act or any rights or obligations arising* thereunder In order to guard against frivolous and vexatious appeals it is proposed that, unless the value of the subject matter in dispute exceeds a specified sum an appeal will only lie with the leave of the Federal Court or of *the High Court or State Court concerned.* It is proposed that an appeal shall lie without leave to the Judicial Committee of the Privy Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution, and in any other case only by leave of the Federal Court, unless His Majesty in Council grants special leave to appeal. As a corollary no appeal will be allowed against any decision of a High Court direct to the King in Council in any case where under the Constitution an appeal lies to the Federal Court.

64 On the analogy of the jurisdiction conferred on the Judicial Committee of the Privy Council by Section 4 of the Judicial Committee Act, 1833 the Governor-General will be empowered in his discretion to refer to the Federal Court any justiciable matter on which it is, in his opinion expedient to obtain the opinion of the Court.

65 The Federal Court will consist of a Chief Justice and a specified number of Judges who will be appointed by the Crown and will hold office during good behaviour But power will be taken to increase this number if both Houses of the Legislature present an address to the Governor-General praying that His Majesty may be pleased to do so

The Supreme Court

66 But though a Federal Court, with power and jurisdiction such as those indicated is a necessary and integral part of the Constitution envisaged by these proposals Indian opinion is far from unanimous as to the necessity—or at all events as to the immediate necessity—for a Supreme Court of Appeal. The jurisdiction of such a Court were it established would necessarily be limited to British India and its functions would be within the limits assigned to it, to act as a final Court of Appeal in India from the decisions of the Provincial High Courts on matters other than those—mainly constitutional—which will fall within the jurisdiction of the Federal Court. With such a Court in existence, there would be good reason for limiting the right of appeal from Indian High Courts to the Judicial Committee of the Privy Council and thereby mitigating some of the grounds for dissatisfaction which arise from the delays, expense and inconveniences *necessarily involved in the prosecution* of appeals before so distant a tribunal. On the other hand there is strong support for the view that a Supreme Court for India would be an unnecessary and unjustifiable expense and that it would be difficult to find in addition to the Judges required for the Federal Court and the Provincial High Courts a body of judicial talent of the calibre essential if it is to justify its existence there is moreover difference of opinion as to whether such a Court, if established should be separate from the Federal Court or should be constituted as a Division of that Court. In these circumstances His Majesty s Government are of opinion that the right course is to empower the Federal Legislature to set up such a Court if and when there is sufficient unanimity of view on these and other questions to enable legislation for this purpose to be promoted but that the powers and jurisdiction of the Court should none the less be laid down by the Constitution Act on the lines indicated in paragraphs 163–167 of the Proposals.

The Secretary of State's Advisers

67 His Majesty's Government do not regard a Council of the kind which has been associated with the Secretary of State for India since the Crown took over the affairs of the East India Company in 1858 as any longer necessary in, or appropriate to, the conditions of the new Constitution They are satisfied, however, that the responsibilities of the Secretary of State will remain such as to make it imperative that he should have at his disposal a small body of carefully selected advisers to supplement the assistance which in common with other Ministers he will derive from the permanent staff of his Department

68 " The Secretary of State in Council of India " as a statutory corporation which alone can be plaintiff or defendant in any litigation instituted by, or against, any Governmental authority in India, and in whose name alone can be executed any contract or assurance entered into by any Government in India, is a conception which is manifestly incompatible alike with Provincial self-government and with a responsible Federal Government and the present power of veto possessed by the Council of India over all expenditure from the revenues of India is no less incompatible with the constitutional arrangements outlined in paragraphs 5 to 11 of this Introduction The Proposals, therefore, contemplate the vesting in the Crown on behalf of the Federal Executive and the Provincial Executives respectively of all property now held in the name of the Crown which is required for their respective purposes, and these authorities will be endowed with the right to enter into all contracts and assurances necessary for the performance of their functions, with the right to sue and the liability to be sued in respect of any claims arising in their several spheres of authority It will at the same time be necessary to preserve the existing rights of suit against the Secretary of State in this country in respect of any claims arising out of obligations undertaken by the Secretary of State in Council before, and subsisting at the date of, the inauguration of the Federation, and to place upon the Federal Government an obligation to implement any judgment or award arising therefrom, whether by the provision of funds or otherwise

69 As regards the Secretary of State's Council, it is proposed to enable him to appoint not less than three nor more than six advisers (at least two of whom must have served the Crown in India for not less than 10 years) to hold office for five years The Secretary of State will be free to consult these advisers, either individually or collectively, as he may think fit But he will be required not only to consult them, but to obtain the concurrence of a majority of them on the draft of any Rules regulating the Public Services in India, and in the disposal of any appeal to him permitted by the Constitution from any member of those Services (*see* paragraph 179 of Proposals)

The Public Services

70 The main divisions of the Public Services in India are —

(1) The All-India Services ,

(2) The Provincial Services , and

(3) The Central Services, Classes I and II

Officers of the All-India Services serve chiefly in the Provinces, but they are liable to serve anywhere in India, and a number of the higher posts under the Government of India are held by them These All-India Services include the following —

(i) The Indian Civil Service ,

(ii) The Indian Police ,

(iii) The Indian Forest Service , and

(iv) The Indian Service of Engineers

On the transfer of their fields of service to Ministerial control on the inauguration of the new Constitution, recruitment will cease for Nos. (iii) and (iv)

The Provincial Services cover the whole field of civil administration of the Provinces in the middle and lower grades Members of these services are appointed by the Provincial Governments

Some of the more important of the Central Services are —

(1) The Railway Services

(2) The Indian Posts and Telegraph Traffic Service

(3) The Imperial Customs Service

Persons appointed by the Secretary of State in Council are serving in all these Services.

71 All persons appointed by the Secretary of State in Council have certain important rights. They cannot, for example be dismissed from the Service by any authority subordinate to the Secretary of State in Council their pay is protected from the vote of the Legislatures and they have an ultimate right of appeal to the Secretary of State in Council against all important disciplinary measures taken in India and also in respect of their principal conditions of service

It is intended to safeguard these rights and to extend them to all persons appointed by the Secretary of State after the commencement of the Constitution Act with the exception of the right to retire under the regulations for premature retirement this right it is proposed to give only to officers appointed to the Indian Civil Service and Indian Police up to the time when a decision is taken on the results of the enquiry indicated in paragraph 72

Certain members of the Provincial and Central Services though they may not have been appointed by the Secretary of State in Council have also rights for the preservation of which he is responsible These too will be secured

72 Provision is made for continued recruitment by the Secretary of State to the Indian Civil Service the Indian Police and the Ecclesiastical Department

Provision is also made for securing that all persons appointed by the Secretary of State in Council or the Secretary of State are employed in India on work of the kind for which their recruitment has been considered essential.

At the expiry of five years from the commencement of the Constitution Act a statutory enquiry will be held into the question of future recruitment for the Indian Civil Service and Indian Police and the governments in India will be associated with the enquiry The decision on the results of the enquiry will rest with His Majesty s Government and will be subject to the approval of both Houses of Parliament. Pending the decision on this enquiry the present ratio of British to Indian recruitment will remain unaltered

The question of continued recruitment by the Secretary of State to the superior Medical and Railway Services is under examination. His Majesty s Government hope to submit their recommendations on this matter later to the Joint Select Committee

73 As regards Family Pension Funds to which serving officers now contribute, His Majesty s Government consider that it must be recognised that assets constitute in all cases a definite debt liability of the Government of India and are the property of the subscribers. In these circumstances they are examining a proposal for the adoption of a new financial procedure in relation to these funds with a view to building up gradually separate sterling funds. If such a scheme should prove to be practicable, it will, of course be necessary to consult members of the Services regarding it before any decision is reached. The adoption of any such scheme would probably necessitate

certain statutory provisions not covered by the present Proposals His Majesty's Government hope to be in a position to submit their recommendations on this subject later to the Joint Select Committee

The Statutory Railway Board

74 There is one matter of importance which these Proposals do not cover, namely, the arrangements to be made for the administration of the Railways under the Federal Government His Majesty's Government consider that it will be essential that, while the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Body, so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference With such a Statutory Body in existence, it would be necessary to preserve such existing rights as Indian Railway Companies possess under the terms of their contracts to have access to the Secretary of State in regard to disputed points and, if they desire, to proceed to arbitration His Majesty's Government are in consultation with the Government of India on the questions of principle and detail which require settlement before a satisfactory scheme can be devised to carry out these purposes

Fundamental Rights

75 The question of including in the Constitution Act a series of declarations, commonly described as a statement of "fundamental rights," which would be designed to secure either to the community in general, or to specified sections of it, rights or immunities to which importance is attached, has been much discussed during the proceedings of the Round Table Conference His Majesty's Government see serious objections to giving statutory expression to any large range of declarations of this character, but they are satisfied that certain provisions of this kind, such, for instance, as the respect due to personal liberty and rights of property and the eligibility of all for public office, regardless of differences of caste, religion, etc, can appropriately, and should, find a place in the Constitution Act His Majesty's Government think it probable that occasion may be found in connexion with the inauguration of the new Constitution for a pronouncement by the Sovereign, and, in that event, they think it may well be found expedient humbly to submit for His Majesty's consideration that such a pronouncement might advantageously give expression to some of the propositions suggested to them in this connexion which prove unsuitable for statutory enactment

Conclusion

76 His Majesty's Government are fully aware that the actual drafting of the Constitution Bill, and the consequent repeal of the existing Government of India Act, will raise a number of other questions—some of importance—which these Proposals do not cover, for instance, provision will be required for an Auditor-General, for the establishment of the Secretary of State and for various other matters which the existing Act at present embraces, and which may, or may not, require perpetuation in the Act which takes its place.

15th March, 1933

THE PROPOSALS

1. The general principle underlying all these proposals is that all powers appertaining or incidental to the government of India and all rights authority and jurisdiction possessed in that country—whether flowing from His Majesty's sovereignty over the territories of British India, or derived from treaty grant usage sufferance or otherwise in relation to other territories—are vested in the Crown and are exercisable by and in the name of the King Emperor

[See paragraph 9 of Introduction]

PART I

THE FEDERATION

GENERAL

2. The Federation of India will be a union between the Governors Provinces and those Indian States whose Rulers signify their desire to accede to the Federation by a formal Instrument of Accession By this Instrument the Ruler will transfer to the Crown for the purposes of the Federation his powers and jurisdiction in respect of those matters which he is willing to recognise as federal matters and the powers and jurisdiction so transferred will thereafter be exercised on behalf of the Federation and in accordance with the provisions of the Constitution Act by the Governor General the Federal Legislature the Federal Court (with an appeal therefrom to His Majesty in Council) and such other Federal organs as the Constitution Act may create But in the case of every State which accedes the powers and jurisdiction of the Federation in relation to that State and the subjects of its Ruler will be strictly co-terminous with the powers and jurisdiction transferred to the Crown by the Ruler himself and defined in his Instrument of Accession.

3 Except to the extent to which the Ruler of a State has transferred powers and jurisdiction whether by his Instrument of Accession or otherwise —and, in the case of a State which has not acceded to the Federation in all respects—the relations of the State will be with the Crown represented by the Viceroy and not with the Crown represented by the Governor-General as executive head of the Federal Government. Accordingly all powers of the Crown in relation to the States which are at present exercised by the Governor General in Council other than those which fall within the Federal sphere will after Federation be exercised by the Viceroy as the Crown s representative

4. The Federation will be brought into existence by the issue of a Proclamation by His Majesty declaring that on a date to be appointed in the Proclamation the existing nine Governors Provinces with Sind and Orissa (which will be constituted as new and separate Governors Provinces) are to be united in a Federation of India with such Indian States as have acceded or may accede to the Federation but the Proclamation will not be issued until—

(a) His Majesty has received intimation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber have signified their desire to accede to the Federation and

(b) Both Houses of Parliament have presented an Address to His Majesty praying that such a Proclamation may be issued.

5. The authority of the Federation will, without prejudice to the extra territorial powers of the Federal Legislature (see paragraph 111) extend to the Governors Provinces to the acceding States (subject to the limitations

mentioned in paragraph 3), and to those areas in British India which are administered by Chief Commissioners—namely, the Provinces of Delhi, Ajmer-Merwara, Coorg, British Baluchistan and the Andaman and Nicobar Islands These Provinces (with one exception) will be directly subject to the jurisdiction of the Federal Government and Legislature

In the case of British Baluchistan special provision will be made whereby the Governor-General will himself direct and control the administration of this Province (see paragraphs 57–58) Expenditure required for British Baluchistan will not be subject to the vote of the Federal Legislature, but will be open to discussion in both Chambers

The Settlement of Aden is at present a Chief Commissioner's Province The future arrangements for the Settlement are, however, under consideration, and accordingly no proposals in respect of it are included in this document

The Federal Executive

6. The executive authority of the Federation, including the supreme command of the Military, Naval and Air Forces in India, will be exercisable on the King's behalf by a Governor-General holding office during His Majesty's pleasure, but His Majesty may appoint a Commander-in-Chief to exercise in relation to those Forces such powers and functions as may be assigned to him

All executive acts will run in the name of the Governor-General *

7. The executive authority of the Federation will extend in relation to a State-member of the Federation only to such powers and jurisdiction falling within the Federal sphere as the Ruler has transferred to the King

8. The Governor-General will exercise the powers conferred upon him by the Constitution Act as executive head of the Federation and such powers of His Majesty (not being powers inconsistent with the provisions of the Constitution Act) as His Majesty may be pleased by Letters Patent constituting the office of Governor-General to assign to him In exercising all these powers the Governor-General will act in accordance with an Instrument of Instructions to be issued to him by the King

9. The draft of the Governor-General's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment of, or addition to, or omission from, the Instructions

10. The Governor-General's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or of salaries and allowances of his personal and secretarial staff, will be fixed by Order in Council, none of these payments will be subject to the vote of the Legislature

The Working of the Federal Executive

11. The Governor-General will himself direct and control the administration of certain Departments of State—namely, Defence, External Affairs and Ecclesiastical Affairs

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* It follows from this that, broadly speaking, where the words " Governor-General " are used without the added words " in his discretion," or " at his discretion," the Federal Government is meant, in the case of the Reserved Departments, however, the Governor-General being himself the responsible executive A corresponding meaning attaches to the word " Governor " in the case of the Provincial executive

12. In the administration of these Reserved Departments, the Governor-General will be assisted by not more than three Counsellors who will be appointed by the Governor General and whose salaries and conditions of service will be prescribed by Order in Council

13. For the purpose of aiding and advising the Governor General in the exercise of powers conferred upon him by the Constitution Act for the government of the Federation other than powers connected with the matters mentioned in paragraph 11 and matters left by law to his discretion there will be a Council of Ministers The Ministers will be chosen and summoned by the Governor-General and sworn as Members of the Council and will hold office during his pleasure The persons appointed Ministers must be or become within a stated period members of one or other Chamber of the Federal Legislature

14. In his Instrument of Instructions the Governor General will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner that is in consultation with the person who in his judgment, is likely to command the largest following in the Legislature to appoint those persons (including so far as possible members of important minority communities and representatives of the States-members of the Federation) who will best be in a position collectively to command the confidence of the Legislature

15. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Federal Legislature, but, until the Federal Legislature otherwise determines their number and their salaries will be such as the Governor-General determines, subject to limits to be laid down in the Constitution Act

The salary of a Minister will not be subject to variation during his term of office

16 The Governor-General will, whenever he thinks fit preside at meetings of his Council of Ministers. He will also be authorised, after consultation with his Ministers to make in his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself and to his Counsellors in the Reserved Departments, and to the Financial Adviser of all such information as he may direct.

17 The Governor-General will be empowered in his discretion but after consultation with his Ministers to appoint a Financial Adviser to assist him in the discharge of his special responsibility for financial matters—see next paragraph—and also to advise Ministers on matters regarding which they may seek his advice The Financial Adviser will be responsible to the Governor-General and will hold office during his pleasure his salary will be fixed by the Governor-General and will not be subject to the vote of the Legislature

18 Apart from his exclusive responsibility for the Reserved Departments (paragraph 11) the Governor-General in administering the government of the Federation will be declared to have a special responsibility in respect of—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof
(*b*) the safeguarding of the financial stability and credit of the Federation
(*c*) the safeguarding of the legitimate interests of minorities
(*d*) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests
(*e*) the prevention of commercial discrimination

(f) the protection of the rights of any Indian State,

(g) any matter which affects the administration of any Department under the direction and control of the Governor-General

It will be for the Governor-General to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances

19. If in any case in which, in the opinion of the Governor-General, a special responsibility is imposed upon him it appears to him, after considering such advice as has been given him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions

20. The Governor-General, in administering the Departments under his own direction and control, in taking action for the discharge of any special responsibility, and in exercising any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by a principal Secretary of State

21. The Governor-General's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines —

"In matters arising in the Departments which you direct and control on your own responsibility, or in matters the determination of which is by law committed to your discretion, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such manner as you may judge right and expedient for the good government of the Federation, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State

In matters arising out of the exercise of powers conferred upon you for the purposes of the government of the Federation other than those specified in the preceding paragraph it is Our will and pleasure that you should, in the exercise of the powers by law conferred upon you, be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you, in which case it is Our will and pleasure that you should, notwithstanding your Ministers' advice, act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State"*

The Federal Legislature

General

22. The Federal Legislature will consist of the King, represented by the Governor-General, and two Chambers, to be styled the Council of State and the House of Assembly, and will be summoned to meet for the first time not later than a date to be specified in the Proclamation establishing the Federation

Every Act of the Federal Legislature will be expressed as having been enacted by the Governor-General, by and with the consent of both Chambers.

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* For other matters to be included in the Instrument of Instructions, *see* paragraph 14 of Proposals and paragraph 23 of Introduction

23. Power to summon and appoint places for the meeting of the Chambers, to prorogue them and to dissolve them, either separately or simultaneously will be vested in the Governor General at his discretion subject to the requirement that they shall meet at least once in every year and not more than twelve months shall intervene between the end of one session and the commencement of the next.

The Governor General will also be empowered to summon the Chambers for the purpose of addressing them.

24. Each Council of State will continue for seven years and each Assembly for five years unless sooner dissolved

25 A member of the Council of Ministers will have the right to speak, but not to vote in the Chamber of which he is not a Member.

A Counsellor will be *ex officio* an additional member of both Chambers for all purposes except the right of voting

The Composition of the Chambers

26. The Council of State will consist, apart from the Governor General's Counsellors of not more than 260 members of whom 150 will be elected from British India in the manner indicated in Appendix I * not more than 100 will be appointed by the Rulers of States † and not more than ten (who shall not be officials) will be nominated by the Governor General in his discretion.

27 A member of the Council of State will be required to be at least 30 years of age (this age limit not however being applicable to the Ruler of a State) and a British subject or a Ruler or subject of an Indian State and to possess certain prescribed property qualifications or to have been at some previous date a member of the Indian Legislature or of the Federal Legislature or to possess qualifications to be prescribed by the Government of the State or Province which he represents with a view to conferring qualification upon persons who have rendered distinguished public service

28. Casual vacancies in the Council of State will be filled in the case of a British Indian elected representative by election (so long as communal representation is retained as a feature of the Constitution) by those members of the body by which he was elected who are members of the community to which the vacating member belongs and in the case of an appointed or nominated member by a fresh appointment or nomination

29 The Assembly will consist apart from the Governor-General's Counsellors of not more than 375 members of whom 250 will be elected to represent constituencies in British India in the manner indicated in Appendix II and not more than 125 will be appointed by the Rulers of States

30. A member of the Assembly will be required to be not less than 25 years of age and a British subject or a subject of an Indian State

31. Casual vacancies in the Assembly will be filled in the case of an elected member by the same method as that prescribed in Appendix II for the election of the vacating member and, in the case of an appointed member by a fresh appointment by the person by whom the vacating member was appointed.

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* *See* paragraph 18 of Introduction.

† *See* paragraph 19 of Introduction.

32. Only the Ruler of a State who has acceded to the Federation will be entitled to appoint, or take part in appointing, a member of either Chamber of the Federal Legislature, and any vacancies arising out of the operation of this restriction will for the time being remain unfilled *

33. Every member of either Chamber will be required to make and subscribe an oath or affirmation in the following form before taking his seat —

In the case of a representative of a State —

" I, *A B* , having been appointed a member of this $\frac{\text{Council,}}{\text{Assembly,}}$ do solemnly swear (*or* affirm) that, saving the faith and allegiance I owe to *C D* , I will be faithful and bear true allegiance in my capacity as Member of this $\frac{\text{Council}}{\text{Assembly}}$ to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter "

In the case of a representative of British India —

" I, *A B* , having been $\frac{\text{elected}}{\text{nominated}}$ a member of this $\frac{\text{Council,}}{\text{Assembly,}}$ do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter "

34. The following disqualifications will be prescribed for membership of either Chamber —

(*a*) in the case of elected members or of members nominated by the Governor-General, the holding of any office of profit under the Crown other than that of Minister ,

(*b*) a declaration of unsoundness of mind by a competent Court;

(*c*) being an undischarged bankrupt;

(*d*) conviction of the offence of corrupt practices or other election offences ,

(*e*) in the case of a legal practitioner, suspension from practice by order of a competent Court ,

but provision will be made that the last two disqualifications may be removed by order of the Governor-General at his discretion ,

(*f*) having an undisclosed interest in any contract with the Federal Government provided that the mere holding of shares in a company will not by itself involve this disqualification

35. A person sitting or voting as a member of either Chamber when he is not qualified for or is disqualified from, membership will be made liable to a penalty of   in respect of each day on which he so sits or votes, to be recovered in the High Court of the Province or State which the person in respect of whom the complaint is made represents by suit instituted with the consent of a Principal Law Officer of the Federation

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* This paragraph has reference to the allotment to the States by paragraphs 26 and 29 of " not more than 100 " and " not more than 125 " seats in the Council of State and the House of Assembly respectively The figures just quoted represent the total number of seats which will be available to the States when they have all acceded to the Federation, and the intention is that a seat allotted to an individual State will remain unfilled unless and until that State has entered the Federation States under " minority administration " will necessarily be treated as non-acceding States for this and other purposes

36. Subject to the Rules and Standing Orders affecting the Chamber there will be freedom of speech in both Chambers of the Federal Legislature No person will be liable to any proceedings in any Court by reason of his speech or vote in either Chamber or by reason of anything contained in any official report of the proceedings in either Chamber

37 The following matters connected with elections and electoral procedure in so far as provision is not made by the Act will be regulated by Order in Council —

(a) The qualifications of electors

(b) The delimitation of constituencies

(c) The method of election of representatives of communal and other interests

(d) The filling of casual vacancies and

(e) Other matters ancillary to the above

with provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament

For matters other than the above connected with the conduct of elections the Federal Legislature will be empowered to make provision by Act. But until the Federal Legislature otherwise determines existing laws or rules including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections will remain in force subject, however to such modifications or adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution

Legislative Procedure

38 Bills (other than Money Bills which will be initiated in the Assembly) will be introduced in either Chamber

39 The Governor-General will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure But before taking any of these courses it will be open *to the Governor-General to remit a Bill to the Chambers with a Message* requesting its reconsideration in whole or in part, together with such amendments if any as he may recommend

No Bill will become law until it has been agreed to by both Chambers either without amendment or with such amendments only as are agreed to by both Chambers, and has been assented to by the Governor General or in the case of a reserved Bill until His Majesty in Council has signified his assent.

40 Any Act assented to by the Governor General will within twelve months be subject to disallowance by His Majesty in Council.

41. In the case of disagreement between the Chambers the Governor General will be empowered in any case in which a Bill passed by one Chamber has not within three months thereafter been passed by the other either without amendments or with agreed amendments to summon the two Chambers to meet in a joint sitting for the purpose of reaching a decision on the Bill. The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any made therein by one Chamber and not agreed to by the other Any such amendments which are affirmed by a majority of the total number of members voting at the Joint

Session will be deemed to have been carried, and if the Bill, with the amendments, if any, so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers

In the case of a Money Bill, or in cases where, in the Governor-General's opinion, a decision on the Bill cannot consistently with the fulfilment of his responsibilities for a Reserved Department or of any of his "special responsibilities" be deferred, the Governor-General will be empowered in his discretion to summon a Joint Session forthwith

42. In order to enable the Governor-General to fulfil the responsibilities imposed upon him personally for the administration of the Reserved Departments and his "special responsibilities," he will be empowered at his discretion—

(a) to present, or cause to be presented, a Bill to either Chamber, and to declare by Message to both Chambers that it is essential, having regard to his responsibilities for a Reserved Department or, as the case may be, to any of his "special responsibilities," that the Bill so presented should become law before a date specified in the Message, and

(b) to declare by Message in respect of any Bill already introduced in either Chamber that it should for similar reasons become law before a stated date in a form specified in the Message

A Bill which is the subject of such a Message will then be considered or reconsidered by the Chambers, as the case may require, and if, before the date specified, it is not passed by the two Chambers, or is not passed by the two Chambers in the form specified, the Governor-General will be empowered at his discretion to enact it as a Governor-General's Act, either with or without any amendments made by either Chamber after receipt of his Message

A Governor-General's Act so enacted will have the same force and effect as an Act of the Legislature, and will be subject to disallowance in the same manner, but the Governor-General's competence to legislate under this provision will not extend beyond the competence of the Federal Legislature as defined by the Constitution

43 It will be made clear by means of the enacting words of a Governor-General's Act, which will be distinguished from the enacting words of an ordinary Act (see paragraph 22), that Acts of the former description are enacted on the Governor-General's own responsibility

44. Provision will also be made empowering the Governor-General in his discretion, in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of India, to direct that the Bill, clause or amendment shall not be further proceeded with

Procedure with regard to Financial Proposals

45. A recommendation of the Governor-General will be required for any proposal in either Chamber of the Federal Legislature for the imposition of taxation, for the appropriation of public revenues, or any proposal affecting the public debt, or affecting, or imposing any charge upon, public revenues *

* This paragraph represents the constitutional principle embodied in Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire —

"This House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament, unless recommended from the Crown"

46. The Governor-General will cause a statement of the estimated revenue and expenditure of the Federation, together with a statement of all proposals for the appropriation of those revenues, to be laid, in respect of every financial year before both Chambers of the Legislature.

The statement of proposals for appropriation will be so arranged as—

(a) to distinguish between those proposals which will and those which will not (*see paragraph* 49) be submitted to the vote of the Legislature and amongst the latter to distinguish those which are in the nature of standing charges (for example the items in the list in paragraph 49 marked †) and

(b) to specify separately those additional proposals (if any) whether under the votable or non votable Heads, which the Governor General regards as necessary for the discharge of any of his special responsibilities.

47 The proposals for the appropriation of revenues other than proposals relating to the Heads of Expenditure enumerated in paragraph 49 and proposals (if any) made by the Governor-General in discharge of his special responsibilities will be submitted in the form of Demands for Grants to the vote of the Assembly The Assembly will be empowered to assent or refuse assent to any Demand or to reduce the amount specified therein whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it.

48. The Demands as laid before the Assembly will thereafter be laid before the Council of State which will be empowered to require, if a motion to that effect is moved on behalf of the Government and accepted, that any Demand which had been reduced or rejected by the Assembly shall be brought before a Joint Session of both Chambers for final determination.

49. Proposals for appropriations of revenues if they relate to the Heads of Expenditure enumerated in this paragraph, will not be submitted to the vote of either Chamber of the Legislature but will be open to discussion in both Chambers except in the case of the salary and allowances of the Governor General and of expenditure required for the discharge of the functions of the Crown in, and arising out of its relations with the Rulers of Indian States.

The Heads of Expenditure referred to above are —

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service and management of loans † expenditure fixed by or under the Constitution Act † expenditure required to satisfy a decree of any Court or an arbitral award

(ii) The salary and allowances of the Governor-General † of Ministers † of the Governor-General s Counsellors † of the Financial Adviser † of Chief Commissioners † of the Governor-General s personal and secretarial staff and of the staff of the Financial Adviser

(iii) Expenditure required for the Reserved Departments * for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States or for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State

(iv) The salaries and pensions (including pensions payable to their dependants) of Judges of the Federal or Supreme Court or of Judicial Commissioners under the Federal Government † and expenditure certified by the Governor-General after consultation with his Ministers as required for the expenses of those Courts

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* See as regards Defence Expenditure paragraph 23 of Introduction

(v) Expenditure required for Excluded Areas and British Baluchistan ,

(vi) Salaries and pensions payable to, or to the dependants of certain members of the Public Services and certain other sums payable to such persons (see Appendix VII, Part III)

The Governor-General will be empowered to decide finally and conclusively, for all purposes, any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph

*50. At the conclusion of the budget proceedings the Governor-General will authenticate by his signature all appropriations, whether voted or those relating to matters enumerated in paragraph 49 , the appropriations so authenticated will be laid before both Chambers of the Legislature, but will not be open to discussion

In the appropriations so authenticated the Governor-General will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any Head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation

The authentication of the Governor-General will be sufficient authority for the due application of the sums involved

51. The provisions of paragraphs 45 to 50 inclusive will apply with the necessary modifications to proposals for the appropriation of revenues to meet expenditure not included in the Annual Estimates which it may become necessary to incur during the course of the financial year

Procedure in the Federal Legislature

52. The procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber , but the Governor-General will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—

(*a*) regulating the procedure of, and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments or any other special responsibilities with which he is charged , and

(*b*) prohibiting, save with the prior consent of the Governor-General given at his discretion, the discussion of or the asking of questions on—

(i) matters connected with any Indian State other than matters accepted by the Ruler of the State in his Instrument of Accession as being Federal subjects , or

(ii) any action of the Governor-General taken in his discretion in his relationship with a Governor , or

(iii) any matter affecting relations between His Majesty or the Governor-General and any foreign Prince or State

In the event of conflict between a rule so made by the Governor-General and any rule made by the Chamber, the former will prevail and the latter will, to the extent of the inconsistency, be void

* See paragraph 39 of Introduction

Emergency Powers of the Governor-General in relation to Legislation

53. The Governor-General will be empowered at his discretion if at any time he is satisfied that the requirements of the Reserved Departments, or any of the special responsibilities with which he is charged by the Constitution Act render it necessary to make and promulgate such Ordinances as in his opinion the circumstances of the case require containing such provisions as it would have been competent under the provisions of the Constitution Act for the Federal Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period not exceeding six months as may be specified therein the Governor-General will however have power to renew any Ordinance for a second period not exceeding six months but in that event it will be laid before both Houses of Parliament

An Ordinance will have the same force and effect, whilst in operation as an Act of the Federal Legislature but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts, and will be subject to withdrawal at any time by the Governor General.

54. In addition to the powers to be conferred upon the Governor-General at his discretion in the preceding paragraph, the Governor-General will further be empowered if his Ministers are satisfied at a time when the Federal Legislature is not in session that an emergency exists which renders such a course necessary to make and promulgate any such Ordinances for the good government of British India, or any part thereof as the circumstances of the case require containing such provisions as, under the Constitution Act, it would have been competent for the Legislature to enact

An Ordinance promulgated under the proposals contained in this paragraph will have while in operation the same force and effect as an Act of the Federal Legislature but every such Ordinance—

(a) will be required to be laid before the Federal Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature unless both Chambers have in the meantime disapproved it by Resolution in which case it will cease to operate forthwith and

(b) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an act of the Federal Legislature it will also be subject to withdrawal at any time by the Governor-General.

Provisions in the Event of a Breakdown in the Constitution

55 The Governor-General will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the government of the Federation to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any Federal authority as appear to him to be necessary for the purpose of securing that the government of the Federation shall be carried on effectively

A Proclamation so issued will have the same force and effect as an Act of Parliament will be communicated forthwith to a Secretary of State and laid before Parliament will cease to operate at the expiry of six months unless, before the expiry of that period, it has been approved by Resolutions of both Houses of Parliament and may at any time be revoked by Resolutions by both Houses of Parliament.

Chief Commissioners' Provinces

56. Each of the Provinces known as British Baluchistan, Delhi, Ajmer Merwara, Coorg and the Andaman and Nicobar Islands will be administered, subject to the provisions of the Constitution Act, by a Chief Commissioner who will be appointed by the Governor-General in his discretion to hold office during his pleasure.

57. Special provision will be made for British Baluchistan, whereby the Governor-General will himself direct and control the administration of that Province, acting through the agency of the Chief Commissioner

58 Legislation required for British Baluchistan will be obtained in the following manner —

No Act of the Federal Legislature will apply to the Province unless the Governor-General in his discretion so directs, and in giving such a direction the Governor-General will be empowered to direct that the Act, in its application to the Province, or any part thereof, is to have effect subject to such exceptions or modifications as he thinks fit

The Governor-General will also be empowered at his discretion to make Regulations for the peace and good government of British Baluchistan and will be competent by any Regulations so made to repeal or amend any Act of the Federal Legislature which is for the time being applicable to the Province Any such Regulation, on promulgation by the Governor-General in the official Gazette will have the same force and effect in relation to British Baluchistan as an Act of the Federal Legislature, and will, like such Acts, be subject to disallowance by His Majesty in Council

The provisions of the preceding sub-paragraph will apply also to the Andaman and Nicobar Islands

59. In the Chief Commissioners' Provinces the Chief Commissioner will have all such executive power and authority as may be necessary for the administration of the Province, and in the exercise of this power and authority he will (save in the case of British Baluchistan) be directly subordinate to the Federal Government

60 The composition of the Coorg Legislative Council, as existing immediately before the establishment of the Federation, will continue unchanged, and special provisions will be made with regard to its legislative powers

Part II

THE GOVERNORS' PROVINCES

The Provincial Executive

61. A " Governor's Province " will be defined as meaning the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjab, Bihar, the Central Provinces,* Assam, the North-West Frontier Province, Sind, and Orissa †

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* As regards Berar, see paragraph 45 of the Introduction

† The boundaries of the new Province of Orissa will be in accordance with the recommendations of the Orissa Committee of 1932 (following the Chairman's recommendation where this differs from that of the two members), except that the Vizagapatam Agency and the Parlakimedi and Jalantra Maliahs in the Ganjam Agency will remain in the Madras Presidency

62. In a Governor's Province the executive authority will be exercisable on the King's behalf by a Governor holding office during His Majesty's pleasure

All executive acts will run in the name of the Governor

63 The Governor will exercise the powers conferred upon him by the Constitution Act as executive head of the Provincial Government and such powers of His Majesty (not being powers inconsistent with the provisions of the Act) as His Majesty may be pleased by Letters Patent constituting the office of Governor to assign to him In exercising all these powers the Governor will act in accordance with an Instrument of Instructions to be issued to him by the King

64. The draft of the Governor's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament and opportunity will be provided for each House of Parliament to make to His Majesty any representation which that House may desire for any amendment or addition to or omission from the Instructions

65 The Governor's salary will be fixed by the Constitution Act and all other payments in respect of his personal allowances or the salaries and allowances of his personal and secretarial staff will be fixed by Order in Council none of these payments will be subject to the vote of the Legislature

Working of the Provincial Executive

66 For the purpose of aiding and advising the Governor in the exercise of powers conferred on him by the Constitution Act for the government of the Province except as regards matters left by law to his discretion and the administration of Excluded Areas there will be a Council of Ministers The Ministers will be chosen and summoned by the Governor and sworn as Members of the Council and will hold office during his pleasure. Persons appointed Ministers must be or become within a stated period members of the Provincial Legislature

67 In his Instrument of Instructions the Governor will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner that is in consultation with the person who in his judgment is likely to command the largest following in the Legislature to appoint those persons (including so far as possible members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature.

68. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Provincial Legislature but until the Provincial Legislature otherwise determines their number and salaries will be such as the Governor determines subject to limits to be laid down in the Constitution Act.

The salary of a Minister will not be subject to variation during his term of office

69 The Governor will whenever he thinks fit preside at meetings of his Council of Ministers. He will also be authorised after consultation with his Ministers to make at his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself of all such information as he may direct.

*70. In the administration of the government of a Province the Governor will be declared to have a special responsibility in respect of—

(a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof,

(b) the safeguarding of the legitimate interests of minorities,

(c) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests,

(d) the prevention of commercial discrimination,

(e) the protection of the rights of any Indian State,

(f) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas,

(g) securing the execution of orders lawfully issued by the Governor-General,

and the Governors of the North-West Frontier Province and of Sind will in addition be respectively declared to have a special responsibility in respect of—

(h) any matter affecting the Governor's responsibilities as Agent to the Governor-General in the Tribal and other Trans-border Areas, and

(i) the administration of the Sukkur Barrage

It will be for the Governor to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances

71. If in any case in which, in the opinion of the Governor, a special responsibility is imposed upon him, it appears to him, after considering such advice as has been given to him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions

72. The Governor, in taking action for the discharge of any special responsibility or in the exercise of any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by the Governor-General or by a principal Secretary of State

73. The Governor's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines —

"In matters, the determination of which is by law committed to your discretion, and in matters relating to the administration of Excluded Areas, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such manner as you may judge right and expedient for the good government of the Province, subject, however, to such directions as you may from time to time receive from Our Governor-General or from one of Our principal Secretaries of State

In matters arising out of the exercise of powers conferred upon you for the purposes of the government of the Province other than those specified in the preceding paragraph it is Our will and pleasure that you should in the exercise of the powers by law conferred upon you be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you, in which case it is Our will and pleasure that you should,

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* See also end of paragraph 17 of the Introduction

notwithstanding your Ministers advice act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however to such directions as you may from time to time receive from Our Governor-General or from one of Our principal Secretaries of State

THE PROVINCIAL LEGISLATURE

General

74. For every Governor's Province there will be a Provincial Legislature consisting except in the provinces of Bengal, the United Provinces and Bihar of the King represented by the Governor and of one Chamber to be known as the Legislative Assembly

In the Provinces just named the Legislature will consist of His Majesty represented by the Governor and of two Chambers to be known respectively as the Legislative Council and the Legislative Assembly

But provision will be made enabling the Provincial Legislature at any time not less than ten years after the commencement of the Constitution Act—

(a) where the Legislature consists of two Chambers to provide by Act, which both Chambers separately have passed and have confirmed by a subsequent Act passed not less than two years later that it shall consist of one Chamber instead of two Chambers and

(b) where the Legislature consists of one Chamber to present an Address to His Majesty praying that the Legislature may be reconstituted with two Chambers and that the composition of and method of election to the Upper Chamber may be determined by Order in Council

The Provincial Legislatures will be summoned to meet for the first time on dates to be specified by Proclamation.

Every Act of a Provincial Legislature will be expressed as having been enacted by the Governor by and with the consent of the Legislative Assembly or where there are two Chambers of both Chambers of the Legislature

75 Power to summon and appoint places for the meeting of the Provincial Legislature to prorogue it and to dissolve it will be vested in the Governor at his discretion subject to the requirement that it shall meet at least once in every year and that not more than twelve months shall intervene between the end of one session and the commencement of the next. Where the Legislature consists of two Chambers power to dissolve the Chambers will be exercisable in relation to either Chamber separately or to both simultaneously

The Governor will also be empowered to summon the Legislature for the purpose of addressing it.

76 Each Legislative Assembly will continue for five years and each Legislative Council where such a Council exists for seven years, unless sooner dissolved

77 In the case of a Province having a Legislative Council a Member of the Council of Ministers will have the right to speak, but not to vote in the Chamber of which he is not a member

The Composition of the Provincial Legislature

78. The Legislative Assembly of each Governor's Province will consist of the number of members indicated against that Province in Appendix III Part I who will be elected in the manner indicated in the same Appendix.

79 A member of a Provincial Legislative Assembly will be required to be at least 25 years of age and a British subject or a subject of an Indian State

80. The Legislative Councils of Governors' Provinces will consist of the number of members indicated in Appendix III, Part II, who will be elected, or nominated by the Governor, as the case may be, in the manner indicated in the same Appendix

81. A member of a Provincial Legislative Council will be required to be at least 30 years of age and a British subject or a subject of an Indian State

82. Appropriate provision will be made for the filling of vacancies in a Provincial Legislature on the lines proposed for the Federal Legislature (*see paragraphs 28 and 31*)

83. Every member of a Provincial Legislature will be required to make and subscribe an oath or affirmation in the following form before taking his seat —

> "I, *A B*, having been $\frac{\text{elected}}{\text{nominated}}$ a member of this $\frac{\text{Council}}{\text{Assembly}}$ do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter"

84. The following disqualifications will be prescribed for membership of a Provincial Legislature —

(*a*) the holding of any office of profit under the Crown other than that of Minister,

(*b*) a declaration of unsoundness of mind by a competent Court,

(*c*) being an undischarged bankrupt,

(*d*) conviction of the offence of corrupt practices or other election offences,

(*e*) in the case of a legal practitioner, suspension from practice by order of a competent Court,

but provision will be made that this and the last preceding disqualification may be removed by order of the Governor in his discretion,

(*f*) having an undisclosed interest in any contract with the Provincial Government, provided that the mere holding of shares in a company will not by itself involve this disqualification

85. A person sitting or voting as a member of the Provincial Legislature, when he is not qualified for, or is disqualified from, membership, will be made liable to a penalty of   in respect of each day on which he so sits or votes, to be recovered in the High Court of the Province by suit initiated with the consent of a principal Law Officer of the Provincial Government

86. Subject to the rules and Standing Orders of the Legislature there will be freedom of speech in the Provincial Legislature No person will be liable to any proceedings in any Court by reason of his speech or vote, or by reason of anything contained in any official Report of the proceedings

87. In so far as provision is not made by the Act itself for the following matters connected with elections and electoral procedure, they will be prescribed by Order in Council under the Act —

(*a*) the qualifications of electors,

(*b*) the delimitation of constituencies,

(*c*) the method of election of representatives of communal and other interests,

(*d*) the filling of casual vacancies, and

(*e*) other matters ancillary to the above,

With provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament

For matters connected with the conduct of elections for the Provincial Legislature other than the above each Provincial Legislature will be empowered to make provision by Act. But until the Provincial Legislature otherwise determines existing laws or rules including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections will remain in force subject, however to such modifications or adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution

Legislative Procedure

NOTE —The following paragraphs relating to legislative procedure are, with the exception of paragraph 91 framed for the sake of brevity to apply to unicameral Provincial Legislatures. Suitable modification of these provisions for the purpose of adapting them to Legislatures which are bicameral would of course be made. In particular provision would be made that in a bicameral Legislature Bills (other than Money Bills, which will be initiated in the Legislative Assembly) will be introduced in either Chamber

88. The Governor will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty s name to a Bill which has been passed by the Provincial Legislature or to withhold his assent, or to reserve the Bill for the consideration of the Governor-General. But before taking any of these courses it will be open to the Governor to remit a Bill to the Legislature with a Message requesting its reconsideration in whole or in part, together with such amendments if any as he may recommend.

No Bill will become law unless it has been passed by the Legislative Assembly with or without amendment, and has been assented to by the Governor or in cases where the Constitution Act so provides by the Governor General in the case of a Bill reserved for the consideration of the Governor General the Bill will not become law until the Governor-General (or if the Governor-General reserves the Bill His Majesty in Council) has signified his assent.

89 When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions to assent in His Majesty s name to the Bill or to withhold his assent, or to reserve the Bill for the signification of the King s pleasure He will also be empowered if he thinks fit, before taking any of these courses to return the Bill to the Governor with directions that it shall be remitted to the Legislature with a Message to the effect indicated in the preceding paragraph. The Legislature will then reconsider the Bill and if it is again passed with or without amendment it will be presented again to the Governor-General for his consideration.

If at the end of six months from the date on which a Bill is presented to the Governor-General the Governor-General neither assents to it nor reserves it for the signification of the King's pleasure nor returns it to the Governor the Bill will lapse.

90 Any Act assented to by the Governor or by the Governor-General will within twelve months be subject to disallowance by His Majesty in Council.

91. In the case of a Province having a Legislative Council the Governor will be empowered in any case in which a Bill passed by one Chamber has not, within three months thereafter been passed by the other either without amendments or with agreed amendments to summon the two Chambers to meet in a Joint Session for the purpose of reaching a decision on the Bill.

The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other Any such amendments which are affirmed by a majority of the total number of the members voting at the Joint Session will be deemed to have been carried, and if the Bill, with the amendments, if any, so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers

In the case of a Money Bill, or in cases where, in the Governor's opinion, a decision on the Bill cannot, consistently with the fulfilment of any of his "special responsibilities," be deferred, the Governor will be empowered at his discretion to summon a Joint Session forthwith

92. In order to enable the Governor to discharge the "special responsibilities" imposed upon him, he will be empowered at his discretion—

(a) to present, or cause to be presented, a Bill to the Legislature, with a Message that it is essential, having regard to any of his "special responsibilities" that any Bill so presented should become law before a date specified in the Message , and

(b) to declare by Message in respect of any Bill already introduced in the Legislature that it should, for similar reasons, become law before a stated date in the form specified in the Message

If, before the date specified, a Bill which is the subject of such a Message is not passed, or is not passed in the form specified, as the case may be, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by the Legislature, after receipt of his Message

A Governor's Act so enacted will have the same force and effect as an Act of the Provincial Legislature and will be subject to the same requirements in respect of the Governor-General's assent and to disallowance in the same manner as an Act of the Provincial Legislature, but the Governor's competence to legislate under this provision will not extend beyond the competence of the Provincial Legislature as defined by the Constitution

93 It will be made clear by the enacting words of a Governor's Act, which will be distinguished from the enacting words of an ordinary Act (see paragraph 74), that Acts of the former description are enacted on the Governor's own responsibility

94 Provision will also be made empowering the Governor, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with

Procedure with regard to Financial Proposals

95. A recommendation of the Governor will be required for any proposal in the Provincial Legislature for the imposition of taxation, for the appropriation of public revenues, or any proposal affecting the public debt of the Province or affecting or imposing any charge upon public revenues *

96. The Governor will cause a statement of the estimated revenues and expenditure of the Province, together with a statement of proposals for the

* Compare paragraph 45 and the footnote thereto

appropriation of those revenues to be laid in respect of every financial year before the Provincial Legislature, and, where the Legislature consists of two Chambers, before both Chambers.

The statement of proposals for appropriation will be so arranged as—

(a) to distinguish between those proposals which will and those which will not (*see paragraph* 98) be submitted to the vote of the Legislature and amongst the latter to distinguish those which are in the nature of standing charges (for example the items in the list in paragraph 98 marked †) and

(b) to specify separately those additional proposals (if any) whether under the votable or non votable Heads which the Governor regards as necessary for the fulfilment of any of his special responsibilities

97 The proposals for the appropriation of revenues other than proposals relating to the Heads of Expenditure enumerated in paragraph 98 and proposals (if any) made by the Governor in discharge of his special responsibilties will be submitted in the form of Demands for Grants to the vote of the Legislative Assembly The Assembly will be empowered to assent, or refuse assent, to any Demand or to reduce the amount specified therein whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it

98. Proposals for appropriations of revenues if they relate to the Heads of Expenditure enumerated in this paragraph will not be submitted to the vote of the Legislative Assembly but except in the case of the Governor's salary and allowances will be open to discussion in the Assembly

The Heads of Expenditure referred to above are —

(i) Interest Sinking Fund Charges and other expenditure relating to the raising service and management of loans † expenditure fixed by or under the Constitution Act † expenditure required to satisfy a decree of any Court or an arbitral award

(ii) The salary and allowances of the Governor † of Ministers † and of the Governor s personal or secretarial staff

(iii) The salaries and pensions (including pensions payable to their dependants) of Judges of the High Court or Chief Court or Judicial Commissioners † and expenditure certified by the Governor after consultation with his Ministers as required for the expenses of those Courts

(iv) Expenditure debitable to Provincial revenues required for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State

(v) The salaries and pensions payable to or to the dependants of certain members of the Public Services and certain other sums payable to such persons (see Appendix VII Part III)

The Governor will be empowered to decide finally and conclusively for all purposes any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph.

*99 At the conclusion of the budget proceedings the Governor will authenticate by his signature all appropriations whether voted or those relating to matters enumerated in paragraph 98 the appropriations so authenticated will be laid before the Legislature but will not be open to discussion.

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* See paragraph 39 of Introduction.

In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any Head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation

The authentication of the Governor will be sufficient authority for the due application of the sums involved

100. The provisions of paragraphs 95 to 99 inclusive will apply with the necessary modifications to proposals for the appropriation of revenue to meet expenditure not included in the Annual Estimates which it may become necessary to incur during the course of the financial year

101. Provision will be made that until the Provincial Legislature otherwise determines by a decision in support of which at least three-fourths of the members have voted, no proposal for the reduction in any Province (other than a reduction pro-rata with the general educational grant-in-aid) of an existing grant-in-aid on account of the education of the Anglo-Indian and domiciled European community will be deemed to have received the consent of the Legislature unless at least three-fourths of the members have voted in favour of the proposal

Procedure in the Legislature

102. The procedure and conduct of business in the Provincial Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by the Legislature But the Governor will be empowered at his discretion, after consultation with the President or Speaker, as the case may be, to make rules regulating the procedure of, and the conduct of business in, the Chamber or Chambers in relation to matters arising out of, or affecting, any "special responsibility" with which he is charged by the Constitution Act

In the event of conflict between a rule so made by the Governor and any rule made by a Chamber of the Legislature, the former will prevail and the latter will, to the extent of the inconsistency, be void.

Emergency Powers of the Governor in relation to Legislation

103. The Governor will be empowered at his discretion, if at any time he is satisfied that the requirements of any of the "special responsibilities" with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Provincial Legislature to enact

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein, the Governor will, however, have the power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament

An Ordinance will have the same force and effect, whilst in operation, as an Act of the Provincial Legislature, but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts and will be subject to withdrawal at any time by the Governor

104 In addition to the powers to be conferred upon the Governor at his discretion in the preceding paragraph, the Governor will further be empowered, if his Ministers are satisfied, at any time when the Legislature is not in session, that an emergency exists which renders such a course necessary, to

make and promulgate any such Ordinances for the good government of the Province or any part thereof as the circumstances of the case require containing such provisions as under the Constitution Act, it would have been competent for the Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will have while in operation the same force and effect as an Act of the Provincial Legislature but every such Ordinance—

(a) will be required to be laid before the Provincial Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature unless in the meantime the Legislature (or both Chambers where two Chambers exist) has disapproved it by Resolution, in which case it will cease to operate forthwith and

(b) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an Act of the Provincial Legislature it will also be subject to withdrawal at any time by the Governor

Provisions in the event of a Breakdown in the Constitution

105. The Governor will be empowered at his discretion if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the government of the Province to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any Provincial authority as appear to him to be necessary for the purpose of securing that the government of the Province shall be carried on effectively

A Proclamation so issued will have the same force and effect as an Act of Parliament will be communicated forthwith to the Governor-General and to a Secretary of State and laid before Parliament will cease to operate at the expiry of six months unless before the expiry of that period it has been approved by Resolutions of both Houses of Parliament and may at any time be revoked by Resolutions of both Houses of Parliament.

Excluded Areas

106 His Majesty will be empowered to direct by Order in Council that any area within a Province is to be an Excluded Area or a Partially Excluded Area, and by subsequent Orders in Council to revoke or vary any such Order

107 In respect of Partially Excluded Areas the Governor will be declared to have a special responsibility (*see paragraph* 70)

The Governor will himself direct and control the administration of any area in a Province for the time being declared to be an Excluded Area.

108. Legislation required whether for Excluded Areas or Partially Excluded Areas, will be obtained in the following manner —

No Act of the Federal Legislature or of the Provincial Legislature will apply to such an area unless the Governor in his discretion so directs, and in giving such a direction the Governor will be empowered to direct that the Act in its application to the area, or to any specified part thereof, is to have effect subject to such exceptions or modifications as he thinks fit

The Governor will also be empowered at his discretion to make Regulations for the peace and good government of any area which is for the time being an Excluded Area or a Partially Excluded Area and will be competent by any Regulation so made to repeal or amend any Act of the Federal Legislature or of the Provincial Legislature which is for the time being, applicable to the area in question

Regulations made under this provision will be submitted forthwith to the Governor General and will not have effect until he has assented to them but, when assented to by the Governor-General will have the same force and

effect as an Act of the Legislature made applicable to the area by direction of the Governor, and will be subject to disallowance in the same manner as a Provincial Act, but will not be subject to repeal or amendment by any Act of the Provincial or of the Federal Legislature

109. Rules made by the Governor in connexion with legislative procedure will contain a provision prohibiting the discussion in the Provincial Legislature of, or the asking of questions on, any matter arising out of the administration of an Excluded Area, and enabling the Governor, at his discretion, to disallow any resolution or question regarding the administration of a Partially Excluded Area

PART III

RELATIONS BETWEEN THE FEDERATION AND THE FEDERAL UNITS

POWERS OF THE FEDERAL LEGISLATURE AND OF PROVINCIAL LEGISLATURES

110. It will be outside the competence of the Federal and of the Provincial Legislatures to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act and the Constitution Act (except, in the case of the last mentioned Act, in so far as that Act itself provides otherwise)

111 The Federal Legislature will, to the exclusion of any Provincial Legislature, have power to make laws for the peace and good government of the Federation or any part thereof with respect to the matters set out in Appendix VI, List I *

Laws so made will be operative throughout British India, but in the States which have acceded to the Federation only in so far as the Ruler of the State has by his Instrument of Accession accepted the subject with which the law is concerned as a Federal subject Federal laws will be applicable to British subjects and servants of the Crown within any part of India and to all Indian subjects of His Majesty outside India The Federal Legislature will also be empowered to make laws regulating the discipline of His Majesty's Indian Forces, in so far as they are not subject to the Army Act, the Air Force Act, or the Naval Discipline Act, which will be applicable to those Forces wherever they are serving

112. A Provincial Legislature will, to the exclusion of the Federal Legislature, have power to make laws for the peace and good government of the Province or any part thereof with respect to the matters set out in Appendix VI, List II

113. Nothing in paragraph 111 or 112 will operate to debar the Federal Legislature, in legislating for an exclusively federal subject, from devolving upon a Provincial Government or upon any Officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject †

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* NOTE —The lists contained in this Appendix are illustrative only, and do not purport to be either exhaustive or final in their allocations

† NOTE —Any cost which falls in virtue of this provision on any Provincial Government, and which that Government would not otherwise have incurred, will be borne by the Federal Government In the event of disagreement as to the amount or incidence of any charges so involved the question will be referred for decision (which will be final) of an arbitrator to be appointed by the Chief Justice of the Federal Court

114. The Federal Legislature and the Provincial Legislatures will have concurrent powers to make laws with respect to the matters set out in Appendix VI List III but laws made by Provincial Legislatures under these powers will be confined in their operation to the territories of the Province. The intention of providing for this concurrent field is to secure in respect of the subjects entered in the List referred to in this paragraph the greatest measure of uniformity which may be found practicable but at the same time to enable Provincial Legislatures to make laws to meet local conditions.

The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces

In the event of a conflict between a Federal law and a Provincial law in the concurrent field the Federal law will prevail unless the Provincial law was reserved for and has received, the assent of the Governor-General. The Federal Legislature will have no power to repeal or amend a Provincial law to which the Governor-General has thus assented save with the prior sanction of the Governor General.

115 It is intended that the three lists of subjects indicated in Appendix VI shall be as exhaustive as is reasonably possible But it has been found on examination that it is not possible to enumerate every subject of a local and private character with regard to which the legislative power can appropriately rest with the Provinces only It is accordingly proposed to include in the Provincial List a general power to legislate on any matter of a merely local and private nature in the Province not specifically included in that List and not falling within List I or List III but in order to provide for the possibility that a subject which is in its inception of a merely local or private character may subsequently become of all-India interest it is proposed to make that power subject to a right of the Governor-General in his discretion to sanction general legislation by the Federal Legislature on the same subject matter

Provision will also be made enabling either the Federal Legislature or any Provincial Legislature to make a law with respect to a residual subject if any not falling within the scope of any of the three lists by means of an Act to the introduction of which the previous sanction of the Governor-General given at his discretion has been obtained and to which (in the case of a Provincial Act) the assent of the Governor-General has been declared.

116. The Federal Legislature will be empowered at the request of two or more Provinces to pass a law which will be operative in those Provinces and in any other Province which may subsequently adopt it on a subject which would otherwise fall within the legislative competence of a Province only Such a Federal Act will be subject as regards any Province to which it applies, to subsequent amendment or repeal by the Legislature of that Province

117 If any provision of a law of a State is in conflict with an Act of the Federal Legislature regulating any subject which the Ruler of that State has by his Instrument of Accession accepted as a Federal subject, the Act of the Federal Legislature whether passed before or after the making of the law of the State will prevail.

118. In order to minimise uncertainty of law and opportunities for litigation as to the validity of Acts, provision will be made limiting the period within which an Act may be called into question on the ground that exclusive powers to pass such legislation were vested in a Legislature in India other than that which enacted it, and enabling a subordinate Court before which the validity of an Act is called in question on that ground within the time limit to refer the question to the High Court of the Province or State for its decision, and also enabling the High Court of a Province or State to require a subordinate Court to make such a reference

119. The consent of the Governor-General, given at his discretion, will be required to the introduction in the Federal Legislature of legislation which repeals or amends or is repugnant to any Act of Parliament extending to British India, or any Governor-General's or Governor's Act or Ordinance,* or which affects any Department reserved for the control of the Governor-General, or the coinage and currency of the Federation, or the powers and duties of the Federal Reserve Bank in relation to the management of currency and exchange, or religion or religious rites and usages, or the procedure regulating criminal proceedings against European British subjects

120. The consent of the Governor-General given in his discretion will be required to the introduction in a Provincial Legislature of legislation on such matters enumerated in the preceding paragraph as are within the competence of a Provincial Legislature, other than legislation which repeals, amends or is repugnant to a Governor's Act or Ordinance† , or which affects religion or religious rites and usages The introduction in a Provincial Legislature of legislation on these latter subjects will require the consent of the Governor of the Province given in his discretion

121. The giving of consent by the Governor-General or any Governor to the introduction of a Bill will be without prejudice to his power of withholding his assent to, or of reserving, the Bill when passed , but an Act will not be invalid by reason only that prior consent to its introduction was not given, provided that it was duly assented to either by His Majesty, or by the Governor-General or Governor, as the case may be

122. The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject (including companies, partnerships or associations constituted by or under any Federal or Provincial law), in respect of taxation, the holding of property of any kind, the carrying on of any profession, trade, business or occupation, or the employment of any servants or agents, or in respect of residence or travel within the boundaries of the Federation, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth , but no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law

A Federal or Provincial law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor-General or a Governor, as the case may be, in his discretion, to be necessary in the interests of the peace and tranquillity of India or any part thereof ‡

§**123.** The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies, &c , incorporated or constituted by or under the laws of the United Kingdom) to any disability or discrimination in the

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* A Governor-General's or Governor's Ordinance for the purpose of this paragraph means an Ordinance as described in paragraphs 53 and 103

† This relates only to an Ordinance of the kind described in paragraph 103

‡ Without a qualification of this kind, legislation such as, *e g* , the Indian Criminal Tribes Act, would be invalidated by the provisions of this paragraph.

§ A question which will require separate consideration arises with regard to the registration in India of medical practitioners registered in the United Kingdom A Bill which has an important bearing on this question is at present under consideration in the Indian Legislature.

exercise of certain specified rights if an Indian subject of His Majesty or a company &c. constituted by or under a Federal or Provincial law as the case may be would not in the exercise in the United Kingdom of the corresponding right be subject in the United Kingdom to any disability or discrimination of the same or a similar character The rights in question are the right to enter travel and reside in any part of British India to hold property of any kind to carry on any trade or business in, or with the inhabitants of, British India and to appoint and employ at discretion agents and servants for any of the above purposes.

Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in British India and the United Kingdom.

124. An Act of the Federal or of a Provincial Legislature, however which with a view to the encouragement of trade or industry authorises the payment of grants, bounties or subsidies out of public funds will not be held to fall within the terms of the two preceding paragraphs by reason only of the fact that it is limited to persons or companies resident or incorporated in India, or that it imposes on companies not trading in India before the Act was passed as a condition of eligibility for any such grant, bounty or subsidy that the company shall be incorporated by or under the laws of British India, or conditions as to the composition of the Board of Directors or as to the facilities to be given for training Indian subjects of His Majesty

Administrative Relations between the Federal Government and the Units

Relations with the Provinces

125. It will be the duty of a Provincial Government so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province and the authority of the Federal Government will extend to the giving of directions to a Provincial Government to that end

The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject.

126. The Governor-General will be empowered in his discretion to issue instructions to the Governor of any Province as to the manner in which the executive power and authority in that Province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof

Relations with the States Members of the Federation

127 It will be the duty of the Ruler of a State to secure that due effect is given within the territory of his State to every Act of the Federal Legislature which applies to that territory

128. The Governor-General will be empowered and, if the terms of any State s Instrument of Accession so provides, will be required to make agreements with the Ruler of any State for the carrying out in that State, through the agency of State authorities, of any Federal purpose. But it will be a condition of every such agreement that the Governor-General shall be entitled by inspection or otherwise to satisfy himself that an adequate standard of administration is maintained.

129. The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State-member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled.

Financial Powers and Relations*

Property, Contracts and Suits

130. All legal proceedings which may be at present instituted by or against the Secretary of State in Council will, subject to the reservations specified below, be instituted by or against the Federal Government or the Government of a Governor's Province as the case may be

131. All property in India which immediately before the date of the establishment of the Federation was vested in His Majesty for the purposes of the government of India will continue to be vested in His Majesty, but for the respective purposes of the Federal Government and the Governments of Governors' Provinces, and will, subject to any special provisions which may be made in relation to Railways, be allocated between the Federal and Provincial Governments accordingly Property vested in His Majesty for purposes of the government of India which are outside the Federal and Provincial spheres will not be affected by this allocation

Appropriate provision will also be made with regard to property outside India vested in His Majesty for the purposes of the government of India

132. Existing powers of the Secretary of State in Council in relation to property allocated under the preceding paragraph and in relation to the acquisition of property and the making of contracts for purposes of government which are not outside the Federal and Provincial spheres will be transferred to and become powers of the Governor-General of the Federation and Governors of the Provinces respectively All contracts, etc, made under the powers so transferred will be expressed to be made by the Governor-General or the Governor, as the case may be, and may be executed and made in such manner and by such person as he may direct, but no personal liability will be incurred by any person making or executing such a contract

133. The Secretary of State will be substituted for the Secretary of State in Council in any proceedings instituted before the commencement of the Act by or against the Secretary of State in Council

134. Rights and liabilities arising under any Statute or contract in existence at the commencement of the Act, including existing immunities from Indian Income Tax in respect of interest on sterling loans issued or guaranteed by the Secretary of State in Council, will be maintained and any remedies which, but for the passing of the Act would have been enforceable by or against the Secretary of State in Council, will after the commencement of the Act be enforceable by or against the Secretary of State, and all obligations arising under any such statute or contract which imposed a liability on the revenues of India will remain a liability on all the revenues of India, whether Federal or Provincial.

135. Money required to meet any judgment or award given against the Secretary of State will, in the first instance, be a charge on the revenues of the Federation with the right of recovery by the Federal Government, where necessary and appropriate, from Provincial revenues The Secretary of State will have power to secure the implementing of any judgment or award obtained against him

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* See also paragraphs 45–51 and 95–100 for legislative [illegible] with regard to financial proposals

Allocation of Revenues

NOTE —Legislative powers in relation to taxation and raising of revenue will be defined by the legislative schedules in Appendix VI (*see* in particular items 34–37 and 49–54 of List I and 66 and 67 with Annexure of List II)

136. Revenues derived from sources in respect of which the Legislature of a Governor's Province has exclusive or concurrent power to make laws will be allocated as provincial revenues

Revenues derived from sources in respect of which the Federal Legislature has exclusive power to make laws will be allocated as federal revenues but in the cases specified in the following paragraphs the Federation will be empowered or required to make assignments to Provinces or States from Federal revenues

Salt.
Federal Excises.
Export Duties.

137 The Federal Legislature will be empowered to assign to Provinces and States in accordance with such schemes of distribution as it may determine the whole or any part of the net revenues derived from any one or more of the sources specified in the margin in the case however of export duties on jute or jute products an assignment to the producing units will be compulsory and will amount to at least 50 per cent. of the net revenue from the duty

Duties on property passing on death (other than land)
Taxes on mineral rights and on personal capital (other than land)

Terminal taxes on railway water or air borne goods and passengers, and taxes railway tickets and goods freight.

Stamp duties which are the subject of legislation by the Indian Legislature at the date of federation

138. The net revenues derived from the sources specified in the margin will be assigned to the Governors Provinces. The Federal Legislature will in each case lay down the basis of distribution among the Provinces but will be empowered to impose and retain a surcharge on such taxes for federal purposes

Taxes on income (other than agricultural income) except taxes on the income of companies

139 A prescribed percentage not being less than 50 per cent. nor more than 75 per cent., of the net revenues derived from the sources specified in the margin (exclusive of any surcharges imposed by the Provinces, and of revenues derived from taxes on the official emoluments of Federal officers or taxes on income attributable to Chief Commissioners Provinces and other Federal areas) will be assigned on a prescribed basis to the Governors Provinces.

Provision will be made enabling this arrangement, with such modifications as may be found necessary to be extended to any State-member of the Federation which has agreed to accept federal legislation regarding the taxes on income referred to in the margin as applying to the State

For each of the first three years after the commencement of the Constitution Act, however the Federal Government will be entitled to retain in aid of federal revenues out of the moneys which would otherwise be assigned to the Provinces (the amount distributed to the Provinces being correspondingly reduced) a sum to be prescribed and for each of the next seven years a sum which is in any year less than that retained in the previous year by an amount

equal to one-eighth of the sum originally prescribed. But the Governor-General will be empowered in his discretion to suspend these reductions in whole or in part, if after consulting the Federal and Provincial Ministers he is of opinion that their continuance for the time being would endanger the financial stability of the Federation

140. Legislation concerning any of the forms of taxation mentioned in the three preceding paragraphs which directly affects any revenues assigned to the Provinces under those paragraphs will require the previous consent of the Governor-General given in his discretion after consultation with the Federal and Provincial Ministers

141. The Federal Legislature will have power to impose surcharges for Federal purposes on taxes on income (other than agricultural income), no part of the proceeds of which will be assigned to Governors' Provinces (or other units) While such surcharges are in operation, each State-member of the Federation (unless it has agreed to accept Federal legislation regarding taxes on income as applying to the State) will contribute to Federal revenues a sum to be assessed on a prescribed basis But States will not be required to contribute any counterpart to the special addition to taxes on income imposed in September, 1931, if and so long as those additions are still being imposed, though the latter will in other respects be deemed to be Federal surcharges

142. The powers of the Federal Legislature in respect of the imposition of taxes on the income or capital of companies will extend, but not until the expiry of ten years from the commencement of the Constitution Act, to the imposition of taxes on companies in any State-member of the Federation Any taxes so imposed will, if any State so elects, be collected directly from the State by the Federal Government and not from the company.

143. Any assignment or distribution of revenues from Federal sources to State-members of the Federation will be subject to such conditions as may be laid down by Act of the Federal Legislature for the purpose of effecting adjustments in respect of any special privilege or immunity of a financial character enjoyed by a State

144. Provision will be made for subventions to certain Governors' Provinces out of Federal revenues of prescribed amounts and for prescribed periods

145. "Prescribed" in the above paragraphs means prescribed by His Majesty by Order in Council, and the draft of the Orders will be laid before both Houses of Parliament for approval

Borrowing Powers

146. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues within such limits as may from time to time be fixed by Federal law [9 & 10 Will III, c 44, Sections 75 and 86, which necessitates the existing East India Loans Acts procedure in relation to Indian sterling borrowing, will cease to have effect]

147. The trustee status of existing India sterling loans will be maintained and will be extended to future sterling Federal loans

148. The Federal Government will be empowered to grant loans to or to guarantee a loan by any Governor's Province or State-member of the Federation on such terms and under such conditions as it may prescribe

149 The Government of a Governor's Province will have power to borrow for any Provincial purpose on the security of provincial revenues within such limits as may from time to time be fixed by provincial law but the consent of the Federal Government will be required if either (a) there is still outstanding any part of a loan made or guaranteed by the Federal Government or by the Governor General in Council before the commencement of the Constitution Act or (b) the loan is to be raised outside India

General

150 Provision will be made securing that Federal and Provincial Revenues shall be applied for the purposes of the government of India alone

PART IV

THE JUDICATURE

THE FEDERAL COURT

151. The Federal Court will consist of a Chief Justice and not less than Judges together with such further Judges not exceeding as His Majesty may from time to time after considering any Address from the Federal Legislature submitted to him by the Governor General, think fit to appoint.

The Chief Justice and Judges of the Federal Court will be appointed by His Majesty and will hold office during good behaviour The tenure of office of any Judge will cease on his attaining the age of 62 years and any Judge may resign his office to the Governor-General.

152. The salaries pensions leave and other allowances of Judges of the Federal Court will be fixed by Order in Council. But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to his disadvantage during his tenure of office

153. A person will not be qualified for appointment as a Judge of the Federal Court unless he—

(a) has been for at least five years a Judge of a Chartered High Court or

(b) has been for at least five years a Judge of a State Court in India and was at the date of his appointment as such, qualified for appointment as a Judge of a Chartered High Court or

(c) has been for at least five years a Judge of any Court, other than a Chartered High Court, and was at the date of his appointment as such, qualified for appointment as a Judge of a Chartered High Court or

(d) is a barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland of at least fifteen years' standing or

(e) has been for at least fifteen years an Advocate or Pleader of any High Court or of two or more High Courts in succession.

154. The Federal Court will sit at Delhi and at such other place or places, if any as the Chief Justice, with the approval of the Governor-General, from time to time appoints.

155. The Federal Court will have an exclusive original jurisdiction in—

(i) any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are—

(a) the Federation and either a Province or a State, or

(b) two Provinces or two States, or a Province and a State,

(ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Province or a State, or between two Provinces, or a Province and a State, unless the agreement otherwise provides

A matter brought before the Federal Court under the provisions of this paragraph will be heard in the first instance by one Judge or such number of Judges as may be prescribed by rules of Court, and an Appeal will lie to a Full Bench of the Court constituted of such number, not being less than , of Judges as may be determined in the same manner

156. The Federal Court will have an exclusive appellate jurisdiction from any decision given by any High Court or any State Court, so far as it involves the interpretation of the Constitution Act or of any rights or obligations arising thereunder. No appeal will lie under this provision, except with the leave of the Federal Court or of the High Court of the Province or State or unless in a civil case the value of the subject-matter in dispute exceeds Rs .

157. An appeal to the Federal Court will be by way of Special Case on facts stated by the Court from which the appeal is brought The Federal Court may on application for leave to appeal require a Special Case to be stated, and may return a Special Case so stated for a further statement of facts

158. An appeal will lie without leave to the King in Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution Act, but, subject always to the grant of special leave by His Majesty, in any other case only by leave of the Federal Court, unless the value of the subject-matter in dispute exceeds Rs

159 There will be no appeal, whether by special leave or otherwise, direct to the King in Council against any decision of a High Court in cases where, under the Constitution Act, an appeal lies to the Federal Court, either as of right or by leave of the Court

160. The process of the Federal Court will run throughout the Federation, and within those territories all authorities, civil and judicial, will be bound in any place within their respective jurisdictions to recognise and enforce the process and judgments of the Federal Court, and all other Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves

161. The Governor-General will be empowered, in his discretion, to refer to the Federal Court, for hearing and consideration, any justiciable matter which he considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it

162. Provision will be made conferring on the Federal Court powers, similar to those enjoyed by High Courts, enabling the Court to grant remedies, and the Court will be empowered, with the approval of the Governor-General to make rules of Court regulating the practice and procedure of the Court, including the fees to be charged in respect of proceedings in the Court

The Supreme Court

163. Provision will be made enabling the Federal Legislature to establish a Supreme Court of Appeal for British India with a jurisdiction not exceeding that indicated in the following paragraphs and to confer on it powers to grant remedies to regulate procedure and to prescribe fees similar to those enjoyed by a High Court

But the introduction of any Bill promoted for this purpose will require the previous sanction of the Governor General given at his discretion.

164. The President and Judges of the Supreme Court will be appointed by His Majesty and will hold office during good behaviour The tenure of office of any Judge will cease on his attaining the age of 62 years and any Judge may resign his office to the Governor-General.

The provisions relating to the qualifications for appointment of Judges will be the same as in the case of the Federal Court, and as in the case of that Court, the salaries, pensions, leave and other allowances of the Judges will be regulated by Order in Council

165 The Supreme Court will be a Court of Appeal from the High Courts in British India, whether established by Letters Patent or otherwise

166 Appeals to the Supreme Court in civil cases will be subject to the provisions now applicable to appeals to His Majesty in Council, including appeals by special leave, but power will be reserved to the Federal Legislature to limit the right of appeal so far as it depends on the value of the subject matter in dispute to cases in which the value exceeds a specified amount not being less than Rs 10 000 (the existing limit in the case of appeals to the King in Council)

Appeals in criminal cases will lie only where a sentence of death has been passed or where an acquittal on a criminal charge has been reversed by a High Court, and also where leave to appeal has been given by the Supreme Court on consideration of a certificate by a High Court that the case is a fit one for a further appeal

167 On the establishment of the Supreme Court, a direct appeal from a High Court to His Majesty in Council in either a civil or a criminal case will be barred An appeal from the Supreme Court to His Majesty in Council will be allowed in civil cases only by leave of the Supreme Court or by special leave In criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise

The Provincial High Courts

168. The existing High Courts established by Letters Patent, usually known as the Chartered High Courts will be maintained.

169 The Judges of High Courts will continue to be appointed by His Majesty and will hold office during good behaviour The tenure of office of any Judge will cease on his attaining the age of 62 years and any Judge may resign his office to the Governor General.

170 The qualifications for appointment as a Chief Justice or Judge will remain as at present, but the existing provision, which requires that one-third of the Judges of a Court must be barristers or members of the Faculty of Advocates in Scotland and that one-third must be members of the Indian Civil Service will be abrogated

Any person qualified to be a Judge will be eligible for appointment as Chief Justice

171. The salaries, pensions, leave and other allowances of Judges of the High Courts will be regulated by Order in Council But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to his disadvantage during his tenure of office

172. The power to appoint temporary additional Judges and to fill temporary vacancies in the High Courts will be vested in the Governor-General in his discretion

173. Subject to any provision which may be made by the Federal Legislature or by any Provincial Legislature within their respective spheres, as determined by the provisions of paragraphs 111, 112 and 114, the High Courts will have the jurisdiction, powers and authority vested in them at the time of the commencement of the Constitution Act

174. His Majesty will be empowered to establish additional Chartered High Courts as required, and the Governor-General will, as at present, have power to transfer areas from the jurisdiction of one High Court to that of another, and to authorise a High Court to exercise jurisdiction in parts of British India not included within the local limits of its jurisdiction, and in respect of British subjects in parts of India outside British India

175. The Federal Legislature will have power to regulate the powers of superintendence exercised by High Courts over subordinate Courts in the Province

PART V

THE SECRETARY OF STATE'S ADVISERS

176. After the commencement of the Constitution Act the Council of India as at present constituted will cease to exist But the Secretary of State will be empowered to appoint not less than three, nor more than six, persons (of whom two at least must have held office for at least 10 years under the Crown in India) for the purpose of advising him

177. Any person so appointed will hold office for a term of five years, will not be eligible for re-appointment, and will not be capable, while holding his appointment, of sitting or voting in Parliament

178 The salary of the Secretary of State's advisers will be £ a year, to be defrayed from monies provided by Parliament

179. The Secretary of State will determine the matters upon which he will consult his advisers, and will be at liberty to seek their advice, either individually or collectively, on any matter But so long as a Secretary of State remains the authority charged by the Constitution Act with the control of any members of the Public Services in India (see paragraph 187) he will be required to lay before his advisers, and to obtain the concurrence of the majority of them to, any draft of rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member

PART VI

THE PUBLIC SERVICES

GENERAL

180. Every person employed under the Crown in India will be given a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of his duty

181. Every person employed in a civil capacity under the Crown in India will hold office during His Majesty's pleasure but he will not be liable to dismissal by any authority subordinate to the authority by whom he was appointed or to dismissal or reduction without being given formal notice of any charge made against him and an opportunity of defending himself unless he has been convicted in a criminal Court or has absconded.

PERSONS APPOINTED BY THE SECRETARY OF STATE IN COUNCIL BEFORE THE COMMENCEMENT OF THE CONSTITUTION ACT AND PERSONS TO BE APPOINTED BY THE SECRETARY OF STATE THEREAFTER.

182. Every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that date or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded

A summary of the principal existing service rights of persons appointed by the Secretary of State in Council is set out in Appendix VII Part I * These rights will be in part embodied in the Constitution Act and in part provided for by rules made by the Secretary of State.

†183. The Secretary of State will after the commencement of the Act make appointments to the Indian Civil Service the Indian Police and the Ecclesiastical Department.‡ The conditions of service of all persons so appointed, including conditions as to pay and allowances, pensions and discipline and conduct, will be regulated by rules made by the Secretary of State. It is intended that these rules shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the Act.

184. Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded.

185 The Secretary of State will be required to make rules regulating the number and character of civil posts to be held by persons appointed by the Crown by the Secretary of State in Council or by the Secretary of State and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons or the keeping vacant of any reserved post for a period longer than three months without the previous sanction of the Secretary of State or save under conditions prescribed by him.

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* The rights referred to in items 14 15 and 16 of this Appendix will be extended to persons appointed by the Secretary of State in Council before the commencement of the Constitution Act and to persons appointed by the Secretary of State thereafter serving under the Federal Government, the Governor-General being substituted for the Governor

† Under existing conditions the personnel required for External Affairs and for conducting relations with the States belong to a common department—the Indian Foreign and Political Department. After the commencement of the Constitution Act, the latter will be under the Viceroy and their recruitment will be controlled by His Majesty's Government. The personnel of the Department of External Affairs will be under the Governor-General, who will himself direct and control that Department. The method of recruitment to it has not yet been determined by His Majesty's Government. For some time at any rate it may for practical reasons, be found desirable to make the two Departments interchangeable.

‡ See also end of paragraph 72 of Introduction.

186. Conditions in regard to pensions and analogous rights will be regulated in accordance with the Rules in force at the date of the Constitution Act and the Secretary of State will have no power to make any amending rules varying any of these conditions so as to affect adversely the pension, &c, of any person appointed before the variation is made An award of pension less than the maximum pension admissible will require the consent of the Secretary of State

Claims in respect of pensions will be against the Federal Government only; it will be for the Federal Government to make any necessary adjustments with the Provinces The pensions of all persons appointed before the commencement of the Constitution Act will be exempt from Indian taxation if the pensioner is residing permanently outside India The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Indian taxation if the pensioner is residing permanently outside India

187. The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council made on an Address of both Houses of Parliament designates another authority for the purpose Any rule made by the Secretary of State will require the approval of the Secretary of State's Advisory Council, unless and until both Houses of Parliament by resolution otherwise determine

188. Provision will be made whereby any person appointed by the Crown who is or has been serving in India in a civil capacity and any person who, though not appointed by the Secretary of State in Council before the commencement of the Constitution Act or by the Secretary of State after its commencement, holds or has held a post borne on the cadre of the Indian Civil Service may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State in Council or by the Secretary of State, as the Secretary of State may decide to be applicable to his case.

189. A statement of the vacancies in, and the recruitment made to, the Services and Departments to which the Secretary of State will appoint after the commencement of the Constitution Act will be laid annually before both Houses of Parliament.

At the expiration of five years from the commencement of the Constitution Act, a statutory enquiry will be held into the question of future recruitment for those Services, except the Foreign Department and the Ecclesiastical Department The decision on the results of this enquiry, with which the Governments in India concerned will be associated will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament.

Persons appointed or to be appointed otherwise than by the Secretary of State in Council or the Secretary of State

190. The Federal and Provincial Governments respectively will appoint, and subject to the following paragraphs, determine the conditions of service of all persons in the Federal and Provincial Services other than persons appointed by the Crown, by the Secretary of State in Council, or by the Secretary of State

191. Every person in those Services at the commencement of the Constitution Act will continue to enjoy all service rights existing as at that date A Summary of the principal existing rights is set out in Appendix VII, Part II.

192. No person appointed by an authority other than the Secretary of State in Council who was serving in India in a civil capacity before the commencement of the Constitution Act will have his conditions of service in respect of pay allowances pension or any other matter adversely affected save by an authority in India competent to pass such an order on the 8th March, 1926 or with the sanction of such authority as the Secretary of State may direct.

193 No rule or order of the Federal or a Provincial Government affecting emoluments pensions provident funds or gratuities and no order upon a memorial will be made or passed to the disadvantage of an officer appointed to a Central Service Class I or to a Provincial Service before the commencement of the Act without the personal concurrence of the Governor-General or the Governor as the case may be No post in a Central Service Class I or any Provincial Service shall be brought under reduction if such reduction would adversely affect any person who at the commencement of the Constitution Act was a member of those Services without the sanction of the Governor-General or the Governor as the case may be or in the case of any person appointed by the Crown or by the Secretary of State in Council, of the Secretary of State

194. Every person whether appointed before or after the commencement of the Constitution Act, who is serving in a civil capacity in a whole-time permanent appointment, will be entitled to one appeal against any order of censure or punishment, or against any order affecting adversely any condition of service pay allowances or pension, or any contract of service, other than an order made by the Federal Government in the case of officers serving under the control of that Government or an order made by a Provincial Government in the case of officers serving under the control of Provincial Governments.

Public Service Commissions

195. There will be a Federal Public Service Commission and a Provincial Public Service Commission for each Province but by agreement the same Provincial Commission will be enabled to serve two or more Provinces jointly

196 The members of the Federal Public Service Commission will be appointed by the Secretary of State who will also determine their number tenure of office and conditions of service including pay allowances, and pensions if any The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in India the other members will be eligible for appointment as Chairman of the Federal Commission or as Chairman of a Provincial Commission and their eligibility for other appointments under the Crown in India will be subject to regulations made by the Secretary of State

197 The members of a Provincial Public Service Commission will be appointed by the Governor who will also determine at his discretion their number tenure of office and conditions of service including pay allowances, and pensions, if any The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in India, save as Chairman or member of the Federal Public Service Commission The other members will be eligible for appointment as Chairman or members of the Federal Commission or of any Provincial Commission, and their eligibility for other appointments under the Crown in India will be subject to regulations made by the Governor

198. The emoluments of the members of all Public Service Commissions will not be subject to the vote of the Legislatures

199. The Federal and Provincial Public Service Commissions will conduct all competitive examinations for appointments to Federal and Provincial Services respectively. The Governments will be required to consult them on all matters relating to methods of recruitment, on appointments by selection, on promotions, and on transfers from one service to another, and the Commissions will advise as to the suitability of candidates for such appointments, promotions or transfers.

200. The Federal and Provincial Governments will also be required, subject to such exceptions (if any) as may be specified in regulations to be made by the Secretary of State or a Governor, as the case may be, to consult the Public Service Commissions in connection with all disciplinary orders (other than an order for suspension) affecting persons in the Public Services in cases which are submitted to the Governments for orders in the exercise of their original or appellate powers; in connection with any claim by an officer that a Government should bear the costs of his defence in legal proceedings against him in respect of acts done in his official capacity; and in connection with any other class of case specified by regulations made from time to time by the Secretary of State or a Governor, as the case may be. But no regulations made by a Governor will be able to confer powers on a Provincial Commission in relation to any person appointed by the Secretary of State without the assent of the Secretary of State, or, in relation to any other person who is not a member of one of the Provincial Services, of the Governor-General.

201. The Federal and Provincial Governments will be empowered to refer to the appropriate Commission for advice any case, petition, or memorial, if they think fit to do so; and the Secretary of State will be empowered to refer to the Federal Commission any matter relating to persons appointed by him on which he may desire to have the opinion of the Commission.

PART VII

TRANSITORY PROVISIONS

202. *The Constitution Act, though treating the Federation as a whole, will contain provisions enabling the Provincial Constitutions, for which it provides, to be brought into being, if necessary, before the Constitution as a whole comes into being. Transitory provisions, also to be included in the Constitution Act, will enable in that event temporary modifications to be made in the provisions of the Constitution Act for the purpose of continuing the existence of the present Indian Legislature, of removing the limit to the number of Counsellors whom the Governor-General may appoint, of placing the administration of all Departments of the Central Government under the Governor-General's exclusive control, and of suspending the operation of the provisions relating to the Council of Ministers. Broadly stated the effect of these transitory provisions will be that the Executive of the Central Government, though necessarily deprived of much of its present range of authority in the Provinces, would for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act.

* This paragraph should be read in relation to paragraphs 12 and 13 of the Introduction.

APPENDIX I

Composition of and Method of Election to the British India Side of the Federal Council of State

(See paragraph 18 of the Introduction and paragraph 28 of the Proposals)

The British India seats in the Council of State will be filled in the following manner 136 seats will be filled by election by means of the single transferable vote by the members of the Provincial Legislatures the number of seats elected by each being as follows —

Madras, Bombay Bengal, United Provinces Punjab and Bihar	18 each
Central Provinces (with Berar)	8
Assam, North West Frontier Province Sind and Orissa	5 each

In Provinces where there is an Upper Chamber its members will participate jointly with the members of the Provincial Assembly for the purpose of election to the Council of State

Indian Christian, Anglo-Indian and European members of the Provincial Legislatures will not be entitled to vote in the elections for the above-mentioned seats in the Council of State. Ten non Provincial communal seats will be reserved in the Council of State, 7 for Europeans, 2 for Indian Christians, 1 for Anglo-Indians, those seats being filled by election by three electoral colleges consisting respectively of the European Indian Christian and Anglo-Indian members of the above-mentioned Provincial Legislatures, voting for the European and Indian Christian seats being by the method of the single transferable vote.

One seat each will be provided in the Council of State for Coorg, Ajmer Delhi, and Baluchistan Members of the Coorg Legislature will elect to the Coorg seat. Special provision will be made for election in the other three of these Chief Commissioners' Provinces. (It may be necessary to resort to nomination in the case of Baluchistan.)

* *See* paragraph 45 of Introduction.

APPENDIX II

FEDERAL ASSEMBLY BRITISH INDIA SIDE

(See paragraph 17 of the Introduction and paragraph 29 of the Proposals)

The British India side of the Federal Assembly will be composed as shown in the annexed table The constituencies will all be provincial, except for the four seats shown in the table as non-provincial

Election to the seats allotted to the Sikh, Muslim, Indian Christian, Anglo-Indian and European constituencies will be by voters voting in separate communal electorates All qualified voters who are not voters in one of these constituencies will be entitled to vote in a general constituency

Seats will be "reserved" for the Depressed Classes out of the general seats to the extent indicated in the table Election to these seats will be by joint electorates in plural-member constituencies, subject to the following procedure All members of the Depressed Classes registered in the general electoral roll of a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats by the method of the single vote, and the four persons getting the highest number of votes in such primary election will be the only candidates for election by the general electorate qualified for the reserved seat

Election to the woman's seat in each of the provinces to which one is allocated will be by the members of the Provincial Legislature voting by means of the single transferable vote

The special seats allotted to Commerce and Industry will be filled by election by Chambers of Commerce and other similar associations

The special seats allotted to Landholders will be filled by election in special landholders' constituencies

The special seats allotted to Labour will be filled from non-communal constituencies, the electoral arrangements have still to be determined

APPENDIX II—(*continued*)

Composition of Federal Assembly (British India side)

Province (and Population in Millions)	Total.	General.	Number of General Seats Reserved for Depressed Classes.	Sikh.	Muslim	Indian Christian.	Anglo-Indian.	European.	Women, Special	Commerce and Industry Special.‡	Landholders Special.	Labour Special.
Madras (45 6)	37	19	4	0	8	2	1	1	2	2	1	1
Bombay (18 0)	30	13	2	0	6	1	1	1	2	3	1	2
Bengal (50 1)	37	10	3	0	17	1	1	1	1	3	1	2
U.P (48 4)	37	19	3	0	12	1	1	1	1	0	1	1
Punjab (23 6)	30	6	1	6	14	1	0	1	1	0	1	0
Bihar (32 4)	30	16	2	0	9	1	0	1	1	0	1	1
C.P (with Berar)§ (15 5)	15	9	2	0	3	0	0	0	1	0	1	1
Assam (8 6)	10	4	1	0	3	1	0	1	0	0	0	1
N W.F.P (2 4)	5	1	0	0	4	0	0	0	0	0	0	0
Sind (3 9)	5	1	0	0	3	0	0	1	0	0	0	0
Orissa (8 7)	5	4	1	0	1	0	0	0	0	0	0	0
Delhi (0 6)	2	1	0	0	1	0	0	0	0	0	0	0
Ajmer (0 6)	1	1	0	0	0	0	0	0	0	0	0	0
Coorg (0 2)	1*	1	0	0	0	0	0	0	0	0	0	0
Baluchistan‖ (0 5)	1*	0	0	0	1	0	0	0	0	0	0	0
Non-Provincial	4	0	0	0	0	0	0	0	0	3†	0	1
Total (257 1)	250	105	19	6	82	8	4	8	9	11	7	10

* Non-communal seats.

† These three seats are to be filled by (1) Associated Chambers of Commerce (2) Federated Chambers of Commerce (3) Northern India Commercial Bodies

‡ The composition of the bodies through which election to these seats will be conducted will not be statutorily fixed It is accordingly not possible to state with certainty how many Europeans and Indians, respectively will be returned. It is, however expected that initially the numbers will be approximately six Europeans and five Indians.

§ See paragraph 45 of Introduction.

‖ It may be necessary to resort to nomination in the case of Baluchistan.

APPENDIX III

Part I

Provincial Legislative Assemblies

(See paragraph 49 of Introduction and paragraph 76 of the Proposals)

1 Seats in the Legislative Assemblies in the Governors' Provinces will be allocated as shown in the annexed table

2 Election to the seats allotted to Muhammadan, European and Sikh constituencies will be by voters voting in separate communal electorates covering between them the whole area of the Province (apart from any portions which may in special cases be excluded from the electoral area as " backward ")

3 All qualified electors, who are not voters either in a Muhammadan, Sikh, Indian Christian (see paragraph 5 below), Anglo-Indian (see paragraph 6 below) or European constituency, will be entitled to vote in a general constituency

4 Seats will be reserved for the Depressed Classes out of the general seats to the extent indicated in the table Election to these seats will be by joint electorates, in plural member constituencies, subject to the following procedure All members of the Depressed Classes registered in the general electoral roll of a constituency will form an electoral college which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats by the method of the single vote, and the four persons getting the highest number of votes in such primary election shall be the only candidates for election by the general electorate who are qualified for the reserved seats

5 Election to the seats allotted to Indian Christians will be by voters voting in separate communal electorates It seems almost certain that practical difficulties will, except possibly in Madras, prevent the formation of Indian Christian constituencies covering the whole area of the Province, and that accordingly special Indian Christian constituencies will have to be formed only in one or two selected areas in the Province Indian Christian voters in these areas will not vote in a general constituency Indian Christian voters outside these areas will vote in a general constituency Special arrangements may be needed in Bihar, where a considerable proportion of the Indian Christian community belong to the aboriginal tribes

6 Election to the seats allotted to Anglo-Indians will be by voters voting in separate communal electorates It is intended, subject to investigation of any practical difficulties that may arise, that the Anglo-Indian constituencies shall cover the whole area of each Province, a postal ballot being employed

7 The method of filling the seats assigned for representatives from backward areas is still under investigation, and the number of seats so assigned should be regarded as provisional

8 The precise electoral machinery to be employed in the constituencies for the special women's seats is still under consideration

9 The seats allotted to " Labour " will be filled from non-communal constituencies. The electoral arrangements have still to be determined, but it is likely that in most Provinces the Labour constituencies will be partly trade union and partly special constituencies

10 The special seats allotted to Commerce and Industry, Mining and Planting will be filled by election through Chambers of Commerce and various Associations. The details of the electoral arrangements for these seats must await further investigation

11 The special seats allotted to Landholders will be filled by election by special Landholders' constituencies

12 The method to be employed for election to the University seats is still under consideration

PART II

Provincial Legislative Councils

(See paragraph 49 of Introduction and paragraph 80 of the Proposals)

The Legislative Councils (Upper Chambers) in the Provinces of Bengal, United Provinces and Bihar will be constituted as follows —

Bengal —Total seats—65

10 nominated by the Governor in his discretion *
27 elected by method of the single transferable vote by the members of the Bengal Legislative Assembly
17 directly elected from constituencies for which only Muslim voters will be qualified
1 directly elected from constituencies for which only European voters will be qualified
10 directly elected from general constituencies for which all qualified voters other than Muslims and Europeans will be entitled to vote

The United Provinces —Total seats—60

9 nominated by the Governor in his discretion.*
17 directly elected from constituencies for which only Muslim voters will be qualified
34 directly elected from general constituencies for which all qualified voters other than Muslims will be entitled to vote

Bihar —Total seats—30

5 nominated by the Governor in his discretion *
12 elected by method of single transferable vote by the members of the Bihar Legislative Assembly
4 directly elected from constituencies for which only Muslim voters will be qualified
9 directly elected from general constituencies for which all qualified voters other than Muslims will be entitled to vote.

* Serving officials will not be eligible for nomination.

Composition of Provincial Legislative Assemblies (Lower House)

Province (Population in Millions shown in brackets)	General	Number of General Seats Reserved for Depressed Classes	Representatives from Backward Areas	Sikh	Muhammadan	Indian Christian	Anglo-Indian	European	Commerce and Industry, Mining and Planting (a)	Landholders	University	Labour	Total
Madras (45·6)	152 (including 6 women)	30	1	0	29 (including 1 woman)	9 (including 1 woman)	2	3	6	6	1	6	215
Bombay (18·0)	119 (b) (including 5 women)	15	1	0	30 (including 1 woman)	3	2	3	7	2	1	7	175
Bengal (50 1)	80 (including 2 women)	30	0	0	119 (including 2 women)	2	4 (including 1 woman)	11	19	5	2	8	250
United Provinces (48 4)	144 (including 4 women)	20	0	0	66 (including 2 women)	2	1	2	3	6	1	3	228
Punjab (23·6)	43 (including 1 woman)	8	0	32 (including 1 woman)	86 (including 2 women)	2	1	1	1	5 (c)	1	3	175
Bihar (32·4)	89 (including 3 women)	15	7	0	40 (including 1 woman)	1	1	2	4	4	1	3	152
Central Provinces (with Berar(e)) (15 5)	87 (including 3 women)	20	1	0	14	0	1	1	2	3	1	2	112
Assam (8·6)	48 (including 1 woman) (d)	7	9	0	34	1	0	1	11	0	0	4	108
North-West Frontier Province (2 4)	9	0	0	3	36	0	0	0	0	2	0	0	50
Sind (3 9)	19 (including 1 woman)	0	0	0	34 (including 1 woman)	0	0	2	2	2	0	1	60
Orissa (6 7)	49 (including 2 women)	7	2	0	4	1	0	0	1	2	0	1	60

(a) The composition of the bodies through which election to these seats will be conducted, though in most cases either predominantly European or predominantly Indian, will not be statutorily fixed. It is, accordingly, not possible in each Province to state with certainty how many Europeans and Indians respectively will be returned. It is, however, expected that, initially, the numbers will be approximately as follows:—Madras, 4 Europeans, 2 Indians; Bombay, 4 Europeans, 3 Indians; Bengal, 14 Europeans, 5 Indians; United Provinces, 2 Europeans, 1 Indian; Punjab, 1 Indian; Bihar, 2 Europeans, 2 Indians; Central Provinces (including Berar), 1 European, 1 Indian; Assam, 8 Europeans, 3 Indians; Sind, 1 European, 1 Indian; Orissa, 1 Indian.

(b) Seven of these seats will be reserved for Mahrattas.

(c) One of these seats is a Tumandar's seat. The four Landholders' seats will be filled from special constituencies with joint electorate. It is probable, from the distribution of the electorate, that the members returned will be 1 Hindu, 1 Sikh and 2 Muhammadans.

(d) This woman's seat will be filled from a non-communal constituency at Shillong.

(e) *See* paragraph 45 of Introduction.

APPENDICES IV AND V

FRANCHISE

Introductory Note

1 The qualifications proposed for the Franchise for the Provincial Legislatures and for the seats allotted to the provinces of British India in the Federal House of Assembly are set out in the Schedules which follow It should be emphasised that the qualifications in question are necessarily subject to modification in details on the preparation of an electoral roll. They are essentially based on existing franchise qualifications for legislative or municipal bodies.

2. *General Qualifications*—Apart from the qualification of race community or religion, in the case of certain seats, voters in respect of any of the qualifications shown in these Schedules must be British subjects, must have attained the age of 21 years, and, save in the case of certain special constituencies, must reside in the constituency in which they claim to vote.

3 For the first two elections under the new constitution, and thereafter unless and until a local Government modifies this requirement in respect of the area under its control, claimants in respect of an educational qualification, or of property held by a husband, will be required to make application to be entered on the electoral roll to the returning officer The proportion of women to men in the electorate will depend upon the number of women who are actually registered under the qualifications in question There are practical difficulties in placing on returning officers the whole responsibility for registration of those qualifications. But His Majesty's Government are very anxious to secure that the proportion of women electors should be adequate and further consideration of the above arrangements may be necessary

4 *The Scheduled Castes* (*Depressed Classes*)—It is the intention of His Majesty's Government to make provision for the inclusion on the Electoral rolls for the Provincial Legislative Assemblies of approximately 10 per cent. of the population of the Depressed Classes (whom it is proposed in future to designate Scheduled Castes) in all Provinces save Bihar and Orissa (where the percentage will be in the neighbourhood of 7 per cent) and the North West Frontier Province and Sind where the numbers of the Scheduled Castes are negligible. In the case of the Federal House of Assembly the approximate general percentage aimed at is 2 per cent. (save in the case of Bihar and Orissa and of the North-West Frontier Province and Sind) Certain provinces are satisfied that it will be possible to attain these percentages under the operation of the general franchise qualifications. In certain other provinces it appears open to question whether this will be the case, and if on the preparation of the Electoral Roll a marked deficiency is found to exist, special steps to make it up will be called for The differential franchise contemplated in such circumstances by certain provinces is provisionally included in the Schedules which follow The Scheduled Castes are enumerated by Provinces in Appendix VIII

5 *The Educational Qualification*—Owing to the marked differences in the educational system in different provinces, and the absence of records which could be used to support a claim to an educational qualification in certain cases, it has proved impossible to lay down any common educational standard for the provincial legislatures which would apply to the whole of India, and in certain provinces it has been found necessary to fix a standard identical with that laid down for the Federal House of Assembly His Majesty's Government, in accepting in these circumstances a high educational standard as an electoral qualification for certain provincial legislatures, do so with the reservation that it shall be open to the Local Governments concerned to lower it once the administrative difficulties involved are overcome.

6. *Sind and Orissa*.—While it has been decided that Sind and Orissa shall be established as separate provinces the framing of a detailed scheme for the franchise for the Provincial Legislative Assembly in those provinces has not yet been completed.

While the franchises in question will probably closely resemble (allowance being made for the special conditions of the new provinces) those laid down in the Schedules which follow for Bombay and Bihar and Orissa, respectively, it has been thought preferable at the present stage to make no specific provision for either Sind or Orissa in the Schedules

7. *Special Constituencies*—In the interest of presenting as complete a picture as possible of the franchise qualifications proposed, the Schedules which follow set out in detail the *existing* qualifications for the various Special Constituencies (representing Landholders, Commerce, Industry, Mining, Planting, Universities) in each province in the case of the Provincial and Federal Legislatures alike The qualifications in question should, however, be regarded as provisional, pending the closer investigation of the existing electorates for these seats which is contemplated at the stage of the general delimitation of constituencies Pending further investigation at the same stage no specific proposals are included in the Schedules in respect of the seats now for the first time assigned to Labour in the Provincial and Federal Legislatures and to Backward areas in certain provincial legislatures, or of certain other constituencies to be brought into being consequent on the Communal decision Nor has any separate provision been made for the special seats reserved for women Election to those seats in the Provincial Legislatures will be on the basis of the general franchise qualifications, while election in the case of the Federal Lower House will be by members of Provincial Legislatures

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APPENDIX IV

Franchise for the British-Indian seats in the House of Assembly

I —Madras
II —Bombay *
III —Bengal
IV —United Provinces
V —Punjab
VI —Bihar and Orissa *
VII —Central Provinces with Berar †
VIII —Assam
IX —North-West Frontier Province.
X —Delhi
XI —Ajmer-Merwara
XII —Coorg
XIII —British Baluchistan
XIV —Non-Provincial Special Constituencies

I —Madras

1.—*Qualifications*‡ *for Electors for Constituencies other than special constituencies*

(*a*) Payment of not less than Rs 3 per annum taxation in a municipality in respect of property, company, or profession tax

(*b*) Holding of land of annual rental value of Rs 10

(*c*) *In urban constituencies*—

(i) payment of property tax, company tax, or profession tax (subject to a minimum of Rs 3, save in the case of Madras City),

(ii) in Madras city only, occupation of a house of rental value of Rs 60.

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* See paragraph 6 of the Introductory Note to Appendices IV and V.

† See Introduction, paragraph 45

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

(d) Assessment to income tax.

(e) Having passed the examination for Matriculation or for the Secondary School Leaving Certificate or an examination accepted as its equivalent by the Local Government.

(f) Being a retired pensioned or discharged officer non-commissioned officer or soldier of His Majesty's Regular Forces.

(g) The differential qualifications to be prescribed in order to produce an electorate of approximately 2 per cent. of the population of the scheduled castes are under consideration.

2. *Franchise for Special Constituencies*

(a) *Landholders* —Registration on the electoral roll of any Landholders constituency in the Madras Provincial Legislative Council.

(b) *Indian Commerce** (South India Chamber of Commerce) —Every Indian, and one duly authorised representative of every Indian partnership if he or the partnership as the case may be has been assessed to income tax in the previous year on an income of not less than Rs 10 000 derived from business within the meaning of the Indian Income Tax Act, 1922.

(c) *Madras Chamber of Commerce* —Being a member of the Chamber with a place of residence in India.†

(d) *Labour* —The question of the method of election and the franchise are under consideration

II.—Bombay

1 —*Qualifications*‡ *of Electors in Constituencies other than special constituencies*

(a) *In rural areas*—

(i) The ownership or occupation of land assessed at Rs. 32 land revenue (Rs 16 in the Upper Sind Frontier the Panch Mahals, and the Ratnagiri districts)

(ii) Occupation as owner or tenant in any municipal district, cantonment, or notified area in the constituency of a building or part of a building separately occupied of an annual rental value of not less than Rs. 36 in Sind or in any other constituency where tax is based on the annual rental value of houses or buildings of an annual rental value of not less than Rs 24 in the Panch Mahals and Ratnagiri districts and Rs 36 elsewhere or where no such tax is leviable of a capital value of not less than Rs 1 000 in the Panch Mahals and Ratnagiri Districts and Rs 1 500 elsewhere

(iii) Being the alienee of the right of Government to the payment of rent or land revenue or a Khot or sharer in a Khoti village or a sharer in a bhagdari or narvadari village responsible for the payment of land revenue subject in all cases to the minima set out in (i) and (ii) above

(b) *In Bombay City and other urban areas* —Occupation as owner or tenant of a building of the annual rental value of not less than Rs 120 in Bombay Rs. 60 in Karachi and in any other urban constituency where any tax is based on the annual rental value of houses or buildings of an annual rental value of not less than Rs. 36 or where no tax so based is levied a capital value of not less than Rs. 1,500

(c) Assessment to income tax.

(d) Having passed the examination for matriculation or for the school leaving certificate or an examination accepted as the equivalent thereof by the Local Government.

(e) Being a retired, pensioned or discharged officer non-commissioned officer or soldier of His Majesty's Regular Forces.

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* See paragraph 7 of the Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications but, pending closer investigation in connection with the general delimitation of constituencies they should be regarded as provisional

† Provisional

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

2 *Franchise for Special Constituencies*

(*a*) *Landholders**—

(i) Being a First- or Second-Class Jagirdar in Sind, or a Zamindar, who, in each of the three revenue years preceding the publication of the electoral roll, has paid not less than Rs 1,000 land revenue on land in Sind

(ii) For the Deccan and Gujerat Sardars and Inamdars constituency, entry on the list for the time being in force under Bombay Government, Political Department, Resolutions 2363 of the 23rd July, 1867, and 6265 of the 1st April, 1909, *or* being the sole alienee of the right of Government to land revenue in respect of an entire village in the presidency of Bombay, excluding Sind and Aden, *or* being the sole holder on talukdari tenure of such a village

(*b*) *Indian Commerce* *—Members of the Indian Merchants' Chamber and Bureau of the Bombay Millowners' Association, and of the Ahmedabad Millowners' Association, are qualified as electors respectively for the constituency comprising the Association of which they are members

(*c*) *European Commerce* *†—Being a member of the Bombay Chamber of Commerce having a residence in India

(*d*) *Labour*—The question of the method of election and franchise is under consideration

III—BENGAL

1 *Qualifications‡ of Electors in Constituencies other than Special Constituencies*

(*a*) Payment of not less than Rs 1 8 per annum in Municipal or cantonment taxes (Rs 3 in the Howrah Municipality)

(*b*) Payment of Re 1 per annum or over as road or public works cess or Rs 2 Chaukidari tax (under the Village Chaukidari Act, 1870), or Union rate (under the Bengal Village Self-Government Act, 1919)

(*c*) *In Calcutta*—

(i) Ownership and occupancy of land or building assessed at Rs 150 per annum

(ii) Ownership or occupancy of land or building assessed at Rs 300 per annum

(iii) Payment of Rs 24 per annum or over as corporation tax

(*d*) Assessment to Income tax (or, in Calcutta only, being a member of a firm assessed to income tax whose share of the firm's income on which income tax was so assessed is certified to have been not less than the minimum on which tax is leviable).

(*e*) Having passed the examination for Matriculation or for the School-leaving Certificate or an examination accepted by the Local Government as the equivalent thereof

(*f*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces

2 *Franchise for Special Constituencies*

(*a*) *Landholders**—

(i) In the Burdwan and Presidency Divisions proprietorship of property assessed to land revenue of not less than Rs 6,000, or road and public works cesses of not less than Rs 1,500

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* See paragraph 7 of the Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation in connection with the general delimitation of constituencies, should be regarded as provisional

† This constituency is at present a Council of State constituency, but will be transferred to the Lower House of the new Federal Legislature

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

(ii) In the Dacca, Rajshahi, and Chittagong Divisions proprietorship in own right, or tenure direct from such a proprietor of property assessed to land revenue of not less than Rs. 4 000 or road and public works cesses of not less than Rs 1 000

(b) *Commerce*—

(i)* Membership of Bengal National Chamber of Commerce, the Marwari Association or the Bengal Mahajan Sabha.

(ii) Bengal Chamber of Commerce. † Having a place of residence in India, and being a Chamber member of the Bengal Chamber of Commerce or a person entitled to exercise the rights and privileges of Chamber membership on behalf of and in the name of any firm, company or other corporation.

(iii) Jute Mills Association Constituency The question of the method of election to and the franchise for the new seat to be created is under consideration.

(c) *Labour* —The question of the method of election and of the franchise is under consideration

IV —United Provinces

1 *Qualifications‡ of Electors in Constituencies other than Special Constituencies*

(a) Ownership or tenancy of a building of rental value of not less than Rs. 36 per annum

(b) Payment of Municipal tax on an income of not less than Rs 200 per annum

(c) Ownership of land paying or assessed to not less than Rs. 25 per annum land revenue.

(d) Payment of rent of not less than Rs 25 per annum as a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1901 or an under proprietor or occupancy tenant as defined in the Oudh Rent Act 1886

(e) In the hill pattis of Kumaon ownership of a fee-simple estate or assessment to payment of land revenue or cesses of any amount, or being a Khaikar

(f) Being a tenant (other than a sub-tenant) as defined in the Agra Tenancy Act 1901 or the Oudh Rent Act 1886 paying rent of not less than Rs 50 per annum or its equivalent in kind, or over

(g) Assessment to income tax.

(h) Having passed the Matriculation or School leaving Certificate examination, or an examination accepted by the Local Government as the equivalent thereof.

(i) Being a retired pensioned or discharged officer non-commissioned officer or soldier of His Majesty's Regular Forces

2 *Franchise for Special Constituencies*

(a) *Landholders* —Land revenue of not less than Rs. 5 000 per annum.*

(b) *Labour.*—The question of the method of election and the franchise is under consideration.

V —Punjab

1 *Qualifications‡ of Electors in Constituencies other than Special Constituencies.*

(a) Ownership of immovable property not being land assessed to land revenue, of a value of not less than Rs. 4 000 or an annual rental value of not less than Rs. 96 or tenancy of such property of an annual rental value of not less than Rs. 96

(b) Payment of direct municipal or cantonment taxes of Rs. 50 or over.

(c) Ownership or tenancy with right of occupancy as defined in Chapter II, Punjab Tenancy Act, 1887 of land paying land revenue of Rs. 25 or over

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* See paragraph 7 of the Introductory Note to Appendices IV and V The qualification shown is the existing qualification, but, pending closer examination in connection with the general delimitation of constituencies it should be regarded as provisional.

† This is at present a Council of State constituency but will be transferred to the Lower House of the new Federal Legislature.

‡ Other than those referred to in paragraph 2 of the Introductory Note Appendices IV and V

(*d*) Tenancy of Crown land on a lease of not less than 3 years rented at Rs 25 per annum or over

(*e*) Being the assignee of land revenue amounting to not less than Rs 50 per annum

(*f*) Being a village officer or headman (Zaildar, inamdar, sufedposh or lambardar) in the constituency

(*g*) Assessment to income tax

(*h*) Having passed the examination for Matriculation or for the School-leaving certificate or an examination accepted by the Local Government as the equivalent thereof

(*i*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's Regular Forces

(*j*) *Scheduled Castes* —The differential qualifications to be prescribed in order to produce an electorate of approximately 2 per cent of the population of the Scheduled Castes are under consideration

2 *Franchise for Special Constituencies*

*Landholders**—

(i) Ownership of land assessed to land revenue of not less than Rs 1,000 per annum

(ii) Being the assignee of land revenue of not less than Rs 1,000 per annum

VI —Bihar and Orissa

1 *Qualifications*† *of Electors for Constituencies other than Special Constituencies*

(*a*) *In all Rural Areas* of the province except the districts of Sambalpur and the Santal Parganas and the Khondmals sub-division of Angul, payment of Chaukidari tax at the rate (save in the case of the Scheduled Castes (see (*h*) below)) of not less than Rs 2 8 annually

(*b*) In Sambalpur and the Santal Parganas—

(i) holding of an estate or estates or portion or portions thereof for which a separate account has been opened, paying an aggregate amount of not less than Rs 12 per annum local cess, *or*

(ii) tenure of land assessed for purposes of local cess to an aggregate amount of not less than Rs 100 per annum, *or*

(iii) holding of land as a raiyat liable to an annual aggregate rent or local cess amounting respectively to Rs 24 and to As 12 in constituencies in the Santal Parganas, and to Rs 48 and Rs 1 8 0 respectively in Sambalpur, *or*

(iv) assessment to not less than Rs 1 8 0 under § 118 C of the Bengal Local Self-Government Act, 1885, or § 47 of the Bihar and Orissa Village Administration Act, 1922

(*c*) *Khondmals Sub-division* —The basis and method of enfranchisement is still under investigation

(*d*) *Urban Areas* —Save in the Jamshedpur urban area, for which a special franchise is under consideration, payment of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs 3

(*e*) Assessment to income tax

(*f*) Having passed the examination for matriculation, or for the school-leaving certificate, or an examination accepted by the Local Government as the equivalent thereof

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* See paragraph 7 of the Introductory Note to Appendices IV and V The qualification shown is the existing qualification, but, pending closer examination in connection with the general delimitation of constituencies, it should be regarded as provisional

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

(g) Being a retired pensioned or discharged officer non-commissioned officer or soldier of His Majesty s Regular Forces

(h) *Scheduled Castes*—Payment of Chaukidari tax of not less than Rs 1 4.0 in rural areas *

2 *Franchise for Special Constituencies*

(a) *Landholders* †—Assessment to land revenue or local cess to an aggregate annual amount of not less than Rs. 10 000 or Rs. 2 500 respectively

(b) *Labour*—The question of the electorate and of the franchise is under consideration

VII.—Central Provinces with Berar‡

1 *Qualifications§ of Electors for Constituencies other than Special Constituencies.*

(a) *For classes other than the Scheduled Castes*

(i) *Rural Areas.*—Payment of a rent or revenue of Rs. 20 or over

(ii) *Urban Areas*—Occupation of a house of rental value of Rs. 30 or payment of an equivalent Haisiyat.

(b) *For the Scheduled Castes.*

(i) In rural areas, payment of a rent or revenue of Rs. 10 or over

(ii) In urban areas, occupation of a house of a rental value of Rs. 18.

(c) Assessment to income tax.

(d) Having passed the examination for matriculation or for the school leaving certificate or an examination accepted by the Local Government as the equivalent thereof

(e) Being a retired, pensioned or discharged officer non-commissioned officer or soldier of His Majesty's Regular Forces.

2. *Franchise for Special Constituencies*

(a) *Landholders*†—

(i) Holder of a hereditary title recognised by Government, who holds agricultural land in proprietary right *or*

(ii) Being the owner of an estate as defined in § 2 (3) of the Central Provinces Land Revenue Act, 1917 *or*

(iii) Being the holder in proprietary right of land the land-revenue or Kamil-jama of which is not less than Rs 5 000

(b) *Labour*—The question of the method of election and of the franchise is under consideration.

VIII—Assam

1 *Qualifications§ of Electors in Constituencies other than Special Constituencies*

(a) Assessment to an aggregate of not less than Rs. 3 municipal or cantonment rates or taxes (Rs. 2 in the case of the Nowgong, and Rs. 1.8.0 in the case of the Sylhet Municipality)

(b) Assessment to not less than Re. 1 per annum as union or chaukidari tax.

(c) Ownership of land assessed to or assessable at land revenue of not less than Rs 15 per annum.

(d) Liability to local rate of not less than Re. 1 per annum.

(e) Assessment to Income Tax.

(f) Having passed the examination for Matriculation or for the school leaving certificate, or an examination accepted by the Local Government as the equivalent thereof.

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* Provisional

† See paragraph 7 of the Introductory Note to Appendices IV and V The qualification shown is the existing qualification, but, pending closer examination in connection with the general delimitation of constituencies, it should be regarded as provisional.

‡ See Introduction paragraph 45

§ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

(g) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces

(h) *Scheduled Castes* —Necessity for any special franchise to bring the scheduled caste electorate up to 2 per cent of population is under investigation

2 *Franchise for Special Constituencies*

Labour —The question of the method of election and of the franchise is under consideration

IX —NORTH-WEST FRONTIER PROVINCE

Qualifications of Electors*—

(a) Ownership of immovable property, not being land assessed to land revenue, but including any building on such land, value Rs 600 or over

(b) Tenancy of immovable property of annual rental value of not less than Rs 48

(c) Payment of rate, cess, or tax to a District Board of not less than Rs 4 per annum

(d) Assessment to any direct municipal or cantonment tax of not less than Rs 50

(e) Income of Rs 40 per mensem or over

(f) Ownership, or occupancy as occupancy tenant or tenant or lessee under a written lease for a period of not less than three years, of land assessed to land revenue of Rs 10 per annum or over

(g) Being an assignee of land revenue of not less than Rs 20 per annum

(h) Assessment to income-tax

(i) Having passed the examination for matriculation or the school leaving certificate, or any examination accepted by the Local Government as the equivalent thereof

(j) Being a zaildar, inamdar, village headman or chief headman in the constituency

(k) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces

X —DELHI

XI —AJMER-MERWARA

XII —COORG

XIII —BRITISH BALUCHISTAN

The electoral arrangements in respect of the seats allotted to these four provinces in the Federal House of Assembly are still under consideration †

XIV —FRANCHISE FOR NON-PROVINCIAL SPECIAL CONSTITUENCIES IN THE FEDERAL LEGISLATURE

(a) *Commerce*—

1 Associated Chambers of Commerce of India

2 Federation of Indian Chambers of Commerce

3 Northern India Commercial Bodies

(b) *Labour*—

1 All India Trades Union Federation

The method of election to all the seats specified above is under consideration

* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

† It may be found necessary to resort to nomination in the case of British Baluchistan

APPENDIX V

PART I

*Franchise for the Provincial Legislative Assemblies**

I.—Madras
II.—Bombay
III.—Bengal.
IV.—United Provinces
V.—Punjab
VI.—Bihar and Orissa.
VII.—Central Provinces with Berar †
VIII.—Assam.
IX.—North West Frontier Province.
X.—Coorg

I.—MADRAS

1 *Qualifications‡ of Electors in Constituencies other than Special Constituencies*

(*a*) Payment of tax under the Madras Motor Vehicles Taxation Act for the whole official year immediately before the electoral roll is prepared or revised or

(*b*) Being a registered landholder inamdar ryotwari pattadar or occupancy ryot under the Madras Estates Land Act or

(*c*) Assessment to ground rent payable to Government or

(*d*) Payment of property tax for the two half years immediately prior to the preparation or revision of the roll under the Madras City Municipality Act or the Madras District Municipalities Act or the Madras Local Boards Act or

(*e*) Payment of profession tax for the two half years immediately prior to the preparation or revision of the roll under the Madras City Municipality Act or the Madras District Municipalities Act or

(*f*) Being during the whole of the previous *fasli* a kanamdar or kuzhikanamdar or the holder of a kudiyiruppu or a verumpatamdar having fixity of tenure each of these terms bearing the meaning defined in the Malabar Tenancy Act, 1929 or

(*g*) Being for the whole of the *fasli* immediately preceding the preparation or revision of the electoral roll a mortgagee with possession lessee or tenant of immovable property (other than a house-property) of an annual value of Rs. 100 in Madras City or a municipality and Rs 50 elsewhere in the Presidency or

(*h*) Being a guardian of a minor possessing one of the above property qualifications or

(*i*) Occupying during the whole of the previous year as sole tenant house property on which property tax or house tax has been duly paid for the year or

(*j*) Being a registered joint landholder inamdar, pattadar or occupancy ryot entitled to an additional vote on an application signed by a majority of the registered joint holders, votes being allowed to joint holders on the following scale —

for landholders and holders of whole inam villages of Rs. 1 000 and above annual rental—one vote for every complete Rs. 500 of annual rental, and for joint holders of minor inams, ryotwari pattas and estate pattas of Rs. 100 and over—one vote for every complete Rs. 50 of assessment rent or kist.

The additional votes will be given only to persons included among the registered joint holders, and the registration should have been made not later than the *fasli* previous to the one in which the rolls are under preparation or revision.

(*k*) Assessment to income tax

* See paragraph 6 of the Introductory Note to Appendices IV and V

† See Introduction, paragraph 45

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

(l) Literacy (i e, ability to read and write in any language) certified by village officers in certificates to be countersigned by the Tahsildars, or alternatively, the holding of the Elementary School Certificate issued by the headmaster of a school recognised by the Government,

(m) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council One elector only to be enfranchised under a husband's property qualification, in addition to the husband himself, but a woman who is once placed on the roll in respect of a husband's property to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband

(n) Being a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces

(o) *Scheduled Castes*—If on the preparation of the electoral roll the electorate of the Scheduled Castes does not amount to approximately 10 per cent of their population, special qualifications will be prescribed in order to make up the deficiency

2 *Franchise for Special Constituencies*

(a) *Landholders* *—Being a zamindar, janmi, or malikanadar who—

(i) Possesses an annual income of not less than Rs 3,000 derived from an estate within the Presidency of Madras

(ii) Is registered as the janmi of land situated within the Presidency of Madras, and assessed at not less than Rs 1,500

(iii) Receives from Government a malikana allowance of not less than Rs 3,000 per annum

(b) *University* †—Being a member of the Senate or an Honorary Fellow, or a graduate of over seven years' standing of the University of Madras

(c) *Planters* †—Being a member of one of the associations affiliated to the United Planters' Association of Southern India

(d) *Madras Chamber of Commerce and Industry* *—Being a member of the Madras Chamber of Commerce or of a Chamber affiliated to it

(e) *Other Commerce Constituencies* *—Members of the Madras Trades Association, the Southern India Chamber of Commerce and the Nattukottai Nagarathars' Association are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are members

(f) *Labour*—The question of the franchise for these constituencies is under consideration

II—BOMBAY

1 *Qualifications* * *of Electors in Constituencies other than Special Constituencies*

(a) Payment of land revenue of Rs 8 and over

(b) Payment of house rent of Rs 60 in Bombay City, Rs 30 in Karachi, and Rs 18 in other urban areas

(c) Assessment to income tax

(d) Being a Hari in Sind

(e) Having passed the examination for matriculation or the school-leaving certificate, or an examination accepted by the Local Government as the equivalent thereof

(f) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of a husband's property qualification, to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband

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† See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional

* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

(g) Being a retired, pensioned or discharged officer non-commissioned officer or soldier of His Majesty's regular forces

(h) *Scheduled Castes*—In the case of the scheduled castes literacy and being a village servant are proposed as differential qualifications If on the preparation of the electoral roll the electorate of the scheduled castes does not come up to 10 per per cent. of their population a reduced property qualification sufficient to make up the deficiency will be prescribed for them in addition.

2 *Franchise for Special Constituencies*

(a) *Landholders**—

(i) *For the Deccan Sardars and Inamdars Constituency*—Being a person entered in the list for the time being in force under Bombay Government Political Department Resolution No 2363 dated 23rd July 1867 *or* being the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situate within the constituency

(ii) *For the Gujarat Sardars and Inamdars Constituency*—Being a person entered in the list for the time being in force under Bombay Political Department, Resolution No 6265 dated 21st September 1909 or being the sole alienee of the right of Government to rent or land revenue in respect of an entire village situate within the constituency *or* being the sole holder on Talukdari tenure of such a village

(iii) *For the (Sind) Jagirdars and Zamindars Constituency*—Being a jagirdar of the first or second class in Sind *or* having in each of the three revenue years preceding the publication of the electoral roll, paid not less than Rs 1 000 land revenue on land in Sind

(b) *University of Bombay**—Being a member of the Senate or an Honorary Fellow or a graduate of seven years standing, of the University of Bombay

(c) *Commerce and Industry**—Being entered on the list of members for the time being in force of the association forming such constituency *or* being entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm or company or corporation entered in such list of members.

(d) *Labour*—The question of the franchise for these constituencies is under consideration.

III.—BENGAL

1 *Qualifications*† *of Electors in Constituencies other than Special Constituencies*

(a) Payment of not less than 6 annas chaukidari tax or 6 annas Union Board rate, or 8 annas cess or 8 annas Municipal tax or fee.

(b) Having passed the examination for Matriculation or the School-leaving certificate or an examination accepted by the Local Government as the equivalent thereof.

(c) Assessment to income tax.

(d) Being the wife of a person possessing the property qualification at present entitling to a vote for the Provincial Legislative Council. One elector only in addition to the husband himself, to be enfranchised under the husband's property qualification, but a woman once placed on the roll in respect of that qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(e) Being a retired pensioned, or discharged officer non-commissioned officer or soldier of His Majesty's regular forces.

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* See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies they should be regarded as provisional.

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

2 *Franchise for Special Constituencies*

(a) *Landholders**—

(i) In the Burdwan Landholders' and the Presidency Landholders' constituency area, payment of land revenue of not less than Rs 4,500, or road and public work cesses of not less than Rs 1,125, in respect of estates held in own right

(ii) In the Dacca Landholders', Rajshahi Landholders' and Chittagong Landholders' constituency area, payment of land revenue of not less than Rs 3,000, or road and public work cesses of not less than Rs 750, in respect of estates held as, or direct from, a proprietor

(b) *Calcutta University* *—Being a member of the Senate or an Honorary Fellow, or a graduate of not less than seven years' standing, of the University

(c) *Dacca University**—

(i) Being resident in Bengal and a member of the Court or a registered graduate

(ii) Being a resident in the Dacca or Chittagong Divisions, who would be qualified to be registered as a graduate of the University if he had not, before the 1st April, 1920, been registered as a graduate of any other Indian University

(d) *Commerce and Industry**—

(i) Chamber members of the Bengal Chamber of Commerce and permanent members of the Indian Jute Mills Association, of the Indian Tea Association, and the Indian Mining Association, with a place of residence in India, are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are such members

(ii) Members of the Calcutta Trades Association, life and ordinary members or the Bengal National Chamber of Commerce and the Bengal Mahajan Sabha, life, ordinary and Mofussil members of the Marwari Association Calcutta, with a place of residence in India, are qualified respectively as electors for the constituency comprising the Association, Chamber, of Sabha of which they are such members

(e) *Labour*—The question of the franchise for these constituencies is under consideration

IV—United Provinces

1 *Qualifications† of Electors in Constituencies other than Special Constituencies*

(a) Payment of land revenue of not less than Rs 5

(b) Payment of rent of not less than Rs 10 in rural areas

(c) Payment of rent of not less than Rs 24 in urban areas

(d) Assessment to income tax

(e) Having passed the Upper Primary Examination, or an examination accepted by the Local Government as the equivalent thereof

(f) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman once placed on the roll in respect of a husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband

(g) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces

2 *Franchise for Special Constituencies*

(a) *Landholders**—

(i) *Taluqdars Constituency*—Ordinary membership of British Indian Association of Oudh

(ii) *Agra Landholders' Constituencies*—Ownership of land in the Constituency assessed to land revenue of not less than Rs 5,000

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* See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

(b) *Commerce and Industry* *—Persons being ordinary full members of the Upper India Chamber of Commerce or of the United Provinces Chamber of Commerce with a place of business within the United Provinces, *or* being entitled to exercise the rights and privileges of such membership on behalf of and in the name of any firm company or other corporation, are qualified as electors for the constituencies comprising their respective Chambers

(c) *Allahabad University**—

(i) Residence in India and Membership of the Court of the Executive Council or Academic Council of the University

(ii) Residence in the United Provinces, and being a graduate of not less than seven years standing, a Doctor or a Master

(d) *Labour*—The question of the franchise for these constituencies is under consideration.

V—Punjab

1 *Qualifications*† *of Electors in Constituencies other than Special Constituencies*

(a) Payment of land revenue of Rs. 5 and upwards.

(b) Tenancy of 6 acres irrigated or 12 acres unirrigated land

(c) Being a zaildar inamdar sufedposh or lambardar in the constituency

(d) Payment of house rent of Rs. 5 or over in towns.

(e) Assessment to municipal or cantonment tax of not less than Rs. 50

(f) Payment of Haisiyat tax at its minimum rate of Rs. 2 or in districts in which no such tax exists, of any other direct tax imposed under the Punjab District Board Tax, and not below Rs 2

(g) Assessment to income tax.

(h) Having passed the primary educational standard or a standard accepted by the Local Government as the equivalent thereof.

(i) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband s property qualification in addition to the husband himself but a woman who is once placed on the roll in respect of her husband s property qualification to continue on the roll during widowhood or until remarriage when she will cease to be qualified in respect of her late husband.

(j) Being a retired, pensioned, or discharged officer non-commissioned officer or soldier of His Majesty's regular forces.

(k) *Scheduled Castes*—If, on the preparation of the electoral roll, the electorate of the scheduled castes does not come up to 10 per cent. of their population, the local government propose to meet the deficiency by the following differential franchise —

(i) Mere literacy

(ii) Ownership of immovable property not being land assessed to land revenue or of *malba* of a house of the value of not less than Rs. 50

2. *Franchise for Special Constituencies.*

(a) *Landholders**—

(i) *Baloch Tumandars Constituency*—Being a Tumandar recognised by the Government or a person performing the duties of a Tumandar with the sanction of the Government.

(ii) *Other Landholders Constituencies*—

Ownership of land assessed to land revenue of not less than Rs 500 per annum *or*

Being the assignee of land revenue of not less than Rs. 500 per annum.

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* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

† See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

(b) *University* *—Being a Fellow or Honorary Fellow or graduate of not less than seven years' standing of the Punjab University, resident in the Punjab

(c) *Commerce* *‡—Being a member of the Punjab Chamber of Commerce or of the Punjab Trades Association having a place of business, or working for gain, in the Punjab

(d) *Labour*—The question of the franchise for these constituencies is under consideration

VI—BIHAR AND ORISSA

1 *Qualifications* * *of Electors in Constituencies other than Special Constituencies*

(a) Save in the districts referred to in (b), (c) and (d) below —

(i) In *rural areas* payment of Chaukidari tax at the minimum rate of 6 annas per annum, and

(ii) In *urban areas* of a corresponding rate of municipal tax (Rs 1/8/0)

(b) In the districts of Sambalpur and Santal Parganas, where chaukidari tax is not levied, the following qualifications —

(i) *Sambalpur*—Annual payment of not less than 1 rupee as rent or 9 pies as local cess

(ii) *Santal Parganas*—Status of resident jamabandi raiyat, paying annually not less than Rs 2 as rent or 1 anna as local cess

(c) *Khondmals Sub-division*—Under consideration

(d) *Jamshedpur City*—A special franchise for this area is under investigation

(e) Assessment to income tax

(f) Having passed the examination for Matriculation or the school-leaving certificate or an examination accepted by the Local Government as the equivalent thereof

(g) Being the wife of a person possessing the property qualifications entitling to a vote for the future Federal House of Assembly One elector only to be enfranchised under the husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification, to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(h) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces

2 *Franchise for Special Constituencies*

(a) *Landholders* *—Liability to payment of not less than Rs 4,000 land-revenue or Rs 1,000 local cess in the Patna Division, Tirhut Division, and Bhagalpur Division Landholders' Constituencies, or of Rs 6,000 land-revenue or Rs 500 local cess in the Orissa Division and Chota Nagpur Division Landholders' Constituencies

(b) *Patna University* †—Being a member of the Senate or of the Syndicate or a registered graduate of the University, with a place of residence in Bihar and Orissa

(c) *Planting* *—Membership of the Bihar Planters' Association, Limited, entitled to vote as such, and for the time being resident in India

(d) *Mining* *—Membership of the Indian Mining Association and of the Indian Mining Federation entitles to a vote for the Association or the Federation Constituency respectively, provided that a person who is a member of both bodies shall be qualified as an elector for such one only as he may elect

(e) *Labour*—The question of the franchise for these constituencies is under consideration

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* See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

‡ The previously existing Industry constituency was not retained in the Communal Decision, and the franchise for it is accordingly omitted

VII.—Central Provinces with Berar*

1 *Qualifications† of Electors in Constituencies other than Special Constituencies*

(*a*) *Rural Areas.*—Payment of Rs. 2 rent or revenue.

(*b*) *Urban Areas*—Occupation of a house with a rental of Rs. 6 or the possession of an equivalent Haisiyat.

(*c*) Assessment to income tax.

(*d*) Being a Watandar Patel or a Watandar Patwari holding office or a registered Deshmukh or Deshpande or a Lambardar

(*e*) Having passed the Matriculation examination or an examination accepted by the Local Government as the equivalent thereof

(*f*) Being the wife of a male voter with a rural property qualification of payment of Rs. 35 rent or revenue or over or occupying a house of rental value of Rs. 36 or over in an urban area. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself but a woman who is once placed on the roll in respect of her husband s property qualification to continue on the roll during widowhood or until remarriage when she will cease to be qualified in respect of her late husband.

(*g*) Being a retired pensioned or discharged officer non-commissioned officer or soldier of His Majesty's regular forces

(*h*) Being a village servant (applicable in the case of the Scheduled castes only)

2 *Franchise for Special Constituencies.*

(*a*) *Landholders* *—Holding of agricultural land in the constituency in proprietary right and being —

(i) Holder of a hereditary title recognised by Government or

(ii) In the Central Provinces owner of an estate as defined in § 2 (3) of the Central Provinces Land Revenue Act, 1917 or

(iii) In the Central Provinces holder in proprietary right of land of which the land revenue or kamiljama is not less than Rs. 3 000 per annum.

(iv) In Berar * a Jagirdar Palampatadar Izaradar Inamdar or a registered Deshmukh or Deshpande holding in other than tenancy right land assessed or assessable to land revenue of not less than Rs 500

(v) In Berar * a holder of land in other than tenancy right assessed or assessable to land revenue of not less than Rs. 1 000

(*b*) *Nagpur University* ‡—Being a registered graduate of the University resident in the Central Provinces or Berar

(*c*) *Commerce and Industry*.‡§

(i) Ownership of a factory situated in the Central Provinces or Berar* and subject to the provisions of the Indian Factories Act, 1911 or in which not less than 200 persons are ordinarily employed, or a person appointed by the owner of such a factory to vote on his behalf.

(ii) A person appointed to vote by any company having a place of business in the Central Provinces or Berar and having a paid up capital of not less than Rs. 25 000

(*d*) *Labour*—The question of the franchise for these constituences is under consideration

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* See Introduction, paragraph 45.

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V

‡ See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications but, pending closer investigation at the stage of the general delimitation of constituencies they should be regarded as provisional

§ The existing Mining seat has not been retained in the Communal Decision the franchise for it is accordingly omitted.

VIII.—ASSAM

1. *Qualifications* of Electors in Constituencies other than Special Constituencies*

(a) Payment of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 2, or in the case of Sylhet municipality, of not less than Rs. 1/8/0,

(b) Tax of not less than 1 rupee in a small town under Chapter XII of the Assam Municipal Act I of 1923,

(c) In the case of constituencies in the districts of Sylhet, Cachar and Goalpara, chaukidari tax of not less than 8 annas under the Village Chaukidari Act, 1873,

(d) In the case of any constituency other than those referred to in (c)—

(i) payment of land revenue, on periodic or annual lease, of not less than Rs. 7/8/0; or

(ii) payment of local rate of not less than 8 annas, or

(iii) in the districts of Lakhimpur, Sibsagar, Darrang, Nowgong, Kamrup, and in the plains mouzas of the Garo Hills and of the Mikir Hills, payment of rent to a landlord of not less than Rs. 7/8/0,

(e) Assessment to income tax,

(f) Successful completion of the educational course immediately below the old Upper Primary stage, or its equivalent,

(g) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(h) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

2. *Franchise for Special Constituencies*

(a) *Planting.*†—Being the superintendent or manager of or an Engineer or medical officer employed on, a tea estate in the Assam or the Surma Valley, as the case may be.

(b) *Commerce and Industry*†—

(i) Being the owner of a factory, other than a tea factory, situated in Assam and subject to the provisions of the Indian Factories Act, 1911, or a person appointed by the owner of such a factory to vote on his behalf, *or*

(ii) Being a person appointed to vote by any company other than a company principally engaged in the tea industry, having a place of business in Assam and a paid-up capital of not less than Rs. 25,000.

(c) *Labour.*—The question of the franchise for these constituencies is under consideration.

IX.—NORTH-WEST FRONTIER PROVINCE

1. *Qualifications* of Electors in Constituencies other than Special Constituencies.*

(a) Payment of land revenue of Rs. 5 and upwards,

(b) Tenancy of 6 acres irrigated or 12 acres unirrigated,

(c) Payment of house rent of Rs. 4 and upwards in towns,

(d) Being a zaildar, inamdar, sufedposh, or lambardar in the constituency;

(e) Assessment to municipal or cantonment tax on not less than Rs. 50.

(f) Payment of Haisiyat tax or district board tax of not less than Rs. 2.

(g) Assessment to income tax.

(h) In urban areas the passing of the Middle School Examination, in rural areas of the Upper Primary Standard, or of an examination accepted by the Local Government as the equivalent of either.

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* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

† See paragraph 7 of Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

(i) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself but a woman who is once placed on the roll in respect of her husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband

(j) Being a retired pensioned, or discharged officer non-commissioned officer or soldier of His Majesty's regular Forces.

2. *Franchise for Special Constituencies*

Landholders Being—

(i) Owner of land assessed to land revenue of not less than Rs 250 per annum

(ii) Assignee of land revenue of not less than Rs. 250 per annum.

(iii) The recipient of a muajib inam barat or pension sanctioned by orders passed in settlement operations amounting to not less than Rs 250 per annum.

X.—Coorg

The question of the franchise for the Provincial Legislature is under consideration.

APPENDIX V

Part II

Franchise for the Upper House of the Provincial Legislature in Bengal the United Provinces and Bihar

1 In so far as the seats in the Upper House in the three Provinces in question are to be filled by Proportional Representation (as in Bengal and Bihar) or by nomination (as in all three Provinces) no question of franchise arises

2 The franchise for the seats to be filled by direct election is under examination, and detailed proposals cannot yet be made It is, however intended that the franchise shall be based on high property qualifications somewhat lower than those for the existing Council of State combined with a qualification based on service in certain distinguished public offices such as High Court Judge Minister Member of an Executive Council, Vice-Chancellor of a University &c.

APPENDIX VI

See Proposals paragraphs 111 112 *and* 114

LIST I (*Exclusively Federal*)

1 The common defence of India in time of an emergency declared by the Governor General.

2. The raising maintaining, disciplining and regulating of His Majesty's naval, military and air forces in India and any other armed force raised in India, other than military and armed police maintained by local governments and armed forces maintained by the Rulers of Indian States.

See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

3 Naval, Military and Air Works

4 The administration of cantonment areas by organs of local self-government, and the regulation therein of residential accommodation

5 The employment of the armed forces of His Majesty for the defence of the Provinces against internal disturbance and for the execution and maintenance of the laws of the Federation and the Provinces

6 —(a) Chiefs' Colleges and Educational Institutions for the benefit of past and present members of His Majesty's Forces or of the children of such members

(b) The Benares Hindu University and the Aligarh Muslim University

7 Ecclesiastical affairs, including European cemeteries.

8 External Affairs, including International Obligations subject to previous concurrence of the Units as regards non-Federal subjects

9 Emigration from and Immigration into India and Inter-Provincial Migration, including regulation of Foreigners in India.

10 Pilgrimages beyond India

11. Extradition and Fugitive Offenders

12 —(a) *Construction of Railways in British India and, with the consent of the State, in a State*, but excluding light and feeder railways and extra-municipal tramways being wholly within a Province, but not being in physical connection with federal railways

(b) Regulation of railways in British India and Federal railways in States

(c) Regulation of other railways in respect of—

(i) Fares
(ii) Rates
(iii) Terminals
(iv) Interchangeability of traffic
(v) Safety

13 Air Navigation and Aircraft, including the regulation of Aerodromes

14 Inland Waterways, passing through two or more units

15 Maritime Shipping and Navigation, including carriage of goods by sea.

16 Regulation of fisheries in Indian waters beyond territorial waters

17 Shipping and Navigation on Inland Waterways as regards mechanically-propelled vessels

18 Lighthouses (including their approaches), beacons, lightships and buoys

19 Port Quarantine

20 Ports declared to be Major Ports by or under Federal legislation

21 Establishment and maintenance of postal, telegraphic, telephone, wireless and other like services, and control of wireless apparatus

22 Currency, Coinage and Legal Tender

23 Public Debt of the Federation

24 Post Office Savings Bank.

25 The incorporation and regulation of Banking, Insurance, Trading, Financial and other Companies and Corporations

26 Development of Industries in cases where such development is declared by or under a federal law to be expedient in the public interest

27 Control of cultivation and manufacture of opium and sale of opium for export

28 Control of petroleum and explosives

29 Traffic in arms and ammunition and, in British India, Control of arms and ammunition

30 Copyright, Inventions, Designs, Trademarks and Merchandise Marks

31 Bankruptcy and Insolvency

32 Negotiable instruments

33 Control of motor vehicles as regards licences valid throughout the Federation

34 The regulation of the import and export of commodities across the customs frontiers of the Federation, including the imposition and administration of duties thereon

35 Salt.

36. The imposition and regulation of duties of excise but not including duties of excise on alcoholic liquors, drugs or narcotics (other than tobacco)
37 Imposition and administration of taxes on the income or capital of corporations.
38. Geological Survey of India.
39 Botanical Survey of India.
40 Meteorology
41 Census *Statistics for the purposes of the Federation.*
42. Central Agencies and Institutes for research.
43 The Imperial Library Indian Museum, Imperial War Museum Victoria Memorial, and any other similar Institution controlled and financed by the Federal Government.
44 Pensions payable out of Federal revenues.
45 Federal Services and Federal Public Service Commission.
46 Immovable property in possession of the Federal Government.
47 The imposition by legislation of punishment by fine, penalty or imprisonment for enforcing any law made by the Federal Legislature.
48. Matters in respect of which the Act makes provision until the Federal Legislature otherwise provides.
49 Imposition and administration of taxes on income other than agricultural income or the income of corporations but subject to the power of the Provinces to impose surcharges.
50 The imposition and administration of duties on property passing on death other than land.
51 The imposition and administration of taxes on mineral rights and on personal capital other than land
52. The imposition and administration of terminal taxes on railway water or air-borne goods and passengers and taxes on railway tickets and goods freights.
53 Stamp duties which are the subject of legislation by the Indian Legislature at the date of federation.
54. The imposition and administration of taxes not otherwise specified in this List or List II subject to the consent of the Governor-General given in his discretion after consulting Federal and Provincial Ministers or their representatives
55 Naturalisation and status of aliens.
56 Conduct of elections to the Federal Legislature, including election offences and disputed elections.
57 Standards of weight.
58. All matters arising in Chief Commissioners Provinces (other than British Baluchistan) not having a legislature.
59 Survey of India.
60 Archæology
61 Zoological Survey
62. The recognition throughout British India of the laws, the public Acts and records and judicial proceedings of the Provinces.
63 Jurisdiction, powers and authority of all courts in British India, except the Federal Court and the Supreme Court with respect to the subjects in this list.
64 Matters ancillary and incidental to the subjects specified above.

LIST II (*Exclusively Provincial*)

1 Local self-Government, including matters relating to the constitution and powers of municipal corporations improvement trusts, district boards mining settlements and other local authorities in the Province established for the purpose of local self-government and village administration, but not including matters covered by item No 4 in List I.
2. Establishment, maintenance and management of hospitals asylums charities and eleemosynary institutions in and for the Province (other than marine hospitals)
3 Public health and sanitation.

4 Pilgrimages other than pilgrimages beyond India
5 Education other than the Universities and institutions covered by item No 6 in List I
6 Public works and buildings in connection with the administration of the Province
7 Compulsory acquisition of land
8 Roads, bridges, ferries, tunnels, ropeways, causeways and other means of communication
9 Construction (query—regulation) and maintenance of light and feeder railways and extra-municipal tramways not being in physical connection with federal railways
10 Tramways within municipal areas
11 Water supplies, irrigation and canals, drainage and embankments, water storage and water power
12 Land Revenue, including—
(*a*) assessment and collection of revenue ,
(*b*) maintenance of land records, survey for revenue purposes and records of rights
13 Land tenures, title to land and easements
14 Relations of landlords and tenants and collection of rents
15 Courts of Wards and incumbered and attached estates
16 Land improvement and agricultural loans
17 Colonisation, management and disposal of lands and buildings vested in the Crown for the purposes of the Province
18 Alienation of land revenue and pensions payable out of Provincial revenues (query—frontier remissions)
19 Pre-emption
20 Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, agricultural education, protection against destructive pests and prevention of plant diseases
21 Civil veterinary department, veterinary training, improvement of stock and prevention of animal diseases
22 Fisheries
23 Co-operative Societies.
24 Trading, literary, scientific, religious and other Societies and Associations not being incorporated Companies
25 Forests
26 Control of production, manufacture, possession, transport, purchase and sale of alcoholic liquors, drugs and narcotics
27 Imposition and regulation of duties of excise on alcoholic liquors, drugs and narcotics other than tobacco
28 Administration of justice, including the constitution and organisation of all Courts within the Province, except the Federal Court, the Supreme Court and a High Court, and the maintenance of all Courts within the Province, except the Federal Court and the Supreme Court
29 Jurisdiction of and procedure in Rent and Revenue Courts
30 Jurisdiction, powers and authority of all Courts within the Province except the Federal Court and the Supreme Court, with respect to subjects in this list
31 Administrators-General and Official Trustees
32 Stamp duties not covered by item No 53 in List I
33 Registration of deeds and documents other than the compulsory registration of documents affecting immovable property
34 Registration of births and deaths
35 Religious and charitable endowments
36 Mines and the development of mineral resources in the Province but not including the regulation of the working of mines
37 Control of the production, supply and distribution of commodities

38. Development of industries except in so far as they are covered by Item No 26 in List I
39. Factories except the regulation of the working of factories.
40 Electricity
41 Boilers.
42. Gas.
43 Smoke nuisances
44 Adulteration of foodstuffs and other articles.
45 Weights and measures except standards of weight.
46. Trade and Commerce within the Province except in so far as it is covered by any other subject in these lists
47 Actionable wrongs arising in the Province
48. Ports other than Ports declared to be Major Ports by or under a federal law
49 Inland waterways being wholly within a Province including shipping and navigation thereon, except as regards mechanically propelled vessels
50 Police (including railway and village police) except as regards matters covered by the Code of Criminal Procedure
51 Betting and gambling
52. Prevention of cruelty to animals.
53 Protection of wild birds and wild animals
54 Regulation of motor vehicles except as regards licences valid throughout the Federation.
55 Regulation of dramatic performances and cinemas.
56 Coroners.
57 Criminal tribes
58 European vagrancy
59 Prisons Reformatories Borstal Institutions and other institutions of a like nature
60 Prisoners
61 Pounds and the prevention of cattle trespass
62. Treasure trove
63 Libraries (except the Imperial Library) Museums (except the Indian Museum, the Imperial War Museum and the Victoria Memorial) and other similar institutions controlled and financed by the Provincial Government.
64 Conduct of elections to the Provincial Legislature including election offences and disputed elections.
65 Public Services in a Province and Provincial Public Service Commission.
66 The authorisation of surcharges within such limits as may be prescribed by Order in Council upon income tax assessed by the Federal Government upon the income of persons resident in the Province
67 The raising of provincial revenue—
   (i) from sources and by forms of taxation specified in the Annexure appended to this list and not otherwise provided for by these lists and
   (ii) by any otherwise unspecified forms of taxation, subject to the consent of the Governor-General given in his discretion after consulting the Federal Ministry and Provincial Ministries or their representatives.
68 Relief of the poor
69 Health insurance and invalid and old-age pensions.
70 Money-lenders and money-lending
71 Burials and burial grounds other than European cemeteries.
72. Imposition by legislation of punishment by fine penalty or imprisonment for enforcing any law made by the Provincial Legislature.
73 *Matters with respect to which the Act makes provision until the Provincial Legislature otherwise provides.*
74. The administration and execution of federal laws on the subjects specified in List III, except No 22.
75 Statistics for provincial purposes.

76. Generally, any matter of a merely local or private nature in the Province not specifically included in this list and not falling within List I or List III, subject to the right of the Governor-General in his discretion to sanction general legislation on that subject

77 Matters ancillary and incidental to the subjects specified in this list

ANNEXURE (*see item 67*)

* (*Compare Appendix IV of Report of Federal Finance Committee—Cmd* 4069)

1 Revenue from the public domain, including lands, buildings, mines, forests, fisheries, and any other real property belonging to the Province

2 Revenue from public enterprises such as irrigation, electric power and water supply, markets, slaughter houses, drainage, tolls and ferries, and other undertakings of the Province

3 Profits from banking and investments, loans and advances and state lotteries

4 Fines and penalties arising in respect of subjects administered by the Government of the Province.

5 Fees levied in the course of discharging the functions exercised by the Government of the Province and local authorities, such as court fees, including all fees for judicial or quasi-judicial processes, local rates and dues, fees for the registration of vehicles, licences to possess fire arms and to drive automobiles, licensing of common carriers, fees for the registration of births, deaths and marriages, and of documents

6 Capitation taxes other than taxes on immigrants

7 Taxes on land, including death or succession duties in respect of succession to land

8 Taxes on personal property and circumstance, such as taxes on houses, animals, hearths, windows, vehicles, chaukidari taxes, sumptuary taxes, and taxes on trades, professions and callings

9 Taxes on employment, such as taxes on menials and domestic servants

10 Excises on alcoholic liquors, narcotics (other than tobacco) and drugs, and taxes on consumption not otherwise provided for, such as cesses on the entry of goods into a local area, taxes on the sale of commodities and on turnover, and taxes on advertisements

11 Taxes on agricultural incomes

12 Stamp duties other than those provided for in List I

13 Taxes on entertainments and amusements, betting, gambling and private lotteries

14 Any other receipts accruing in respect of subjects administered by the Province.

LIST III (*Concurrent*)

1 Jurisdiction powers and authority of all Courts (except the Federal Court, the Supreme Court and Rent and Revenue Courts) with respect to the subjects in this List

2 Civil Procedure, including the Law of Limitation and all matters now covered by the Indian Code of Civil Procedure

3 Evidence and Oaths

4 Marriage and Divorce

5 Age of majority and custody and guardianship of infants

6 Adoption

7 Compulsory registration of documents affecting immovable property

8 The law relating to—

(*a*) Wills, intestacy and succession, including all matters now covered by the Indian Succession Act

(*b*) Transfer of property, trusts and trustees, contracts, including partnership, and all matters now covered by the Indian Specific Relief Act

(c) Powers of attorney
(d) Relations between husband and wife
(e) Carriers
(f) Innkeepers.
(g) Arbitration.
(h) Insurance

9 Criminal Law including all matters now covered by the Indian Penal Code but excluding the imposition of punishment by fine penalty or imprisonment for enforcing a law on a subject which is within the exclusive competence of the Federal legislature or a Provincial legislature.

10 Criminal Procedure including all matters now covered by the Indian Code of Criminal Procedure

11 Control of newspapers books and printing presses.

12 Lunacy but not including Lunatic Asylums.

13 Regulation of the working of Mines but not including mineral development.

14 Regulation of the working of factories.

15 Employers liability and Workmen s compensation.

16 Trade Unions

17 Welfare of labour including provident funds and industrial insurance.

18 Labour disputes.

19 Poisons and dangerous drugs.

20 The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising in another Province.

21 Regulation of medical and other professional qualifications.

22 Ancient and historical monuments, including administration thereof.

23 Matters ancillary and incidental to the subjects specified in this list.

NOTE.—The word "now in Nos 2 8 9 and 10 is intended to refer to the date on which the list takes effect.

APPENDIX VII

(*See Proposals, paragraphs* 182 *and* 191)

PART I

List of principal existing rights of officers appointed by the Secretary of State in Council

NOTE —In the case of Sections the reference is to the Government of India Act, and in the case of Rules, to Rules made under that Act

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96 B (1)).

2 Right to be heard in defence before an order of dismissal, removal or reduction is passed (Classification Rule 55)

3. Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights or compensation in lieu thereof (Section 96 B (2))

4. Regulation of conditions of service, pay and allowances, and discipline and conduct, by the Secretary of State in Council (Section 96 B (2))

5 Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable notwithstanding any rules made under Section 96 B (Section 96 B (5))

6 Non-votability of salaries, pensions and payments on appeal (Sections 67 A (3) (iii) and (iv) and 72 D (3) (iv) and (v))

7. The requirement that rules under part VII-A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (Section 96 E)

8. Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919 (Section 96 B (3))

9.—(i) Reservation of certain posts to members of the Indian Civil Service (Section 98)

(ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State in Council (Section 99), or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council (Section 100)

10 Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or local Government (Classification Rules 24 and 10)

11 Provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council (Classification Rule 25)

12 Appointment of anyone who is not a member of an All-India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council (Classification Rule 27)

13. Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service Class I which would adversely affect any officer appointed by the Secretary of State in Council, to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March, 1926 or to the creation of any Specialist Post which would adversely affect any member of an All India Service the Indian Ecclesiastical Establishment and the Indian Political Department.

(Provisos to Classification Rules 32, 40 and 42.)

14 Personal concurrence of the Governor required to any order affecting emoluments or pension any order of formal censure or any order on a memorial to the disadvantage of an officer of an All India Service (Devolution Rule 10)

15 Personal concurrence of the Governor required to an order of posting of an officer of an All India Service (Devolution Rule 10)

16 Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (Section 96 B (1))

17 Right of appeal to the Secretary of State in Council, (i) from any order passed by any authority in India of censure withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension removal or dismissal or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service pay allowances or pension made by the Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification Rules 56 57 and 58)

18. Right of certain officers to retire under the regulations for premature retirement.

Part II

List of principal existing rights of persons appointed by authority other than the Secretary of State in Council

Note —In the case of Sections the reference is to the Government of India Act and in the case of Rules to Rules made under that Act.

1 Protection from dismissal by any authority subordinate to the appointing authority (Section 96 B (1))

2 Right to be heard in defence before an order of dismissal, removal or reduction is passed subject to certain exceptions (Classification Rule 55)

3 Regulation of the strength and conditions of service of the Central Services class I and class II by the Governor-General in Council and of Provincial Services by local Government subject in the case of the latter to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March 1926 should be made without the previous sanction of the Governor-General in Council (Classification Rules 32 33 36 37 40 and 41)

4 Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10)

5 Right of appeal from any order of censure withholding of increments or promotion, reduction recovery from pay of loss caused by negligence or breach of orders suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay allowances or pension and in the case of subordinate services the right of one appeal against an order imposing a penalty (Classification Rules 56 57 58 and 54)

PART III

NON-VOTABLE SALARIES, &c (CIVIL)

(*See Proposals, paragraphs* 49, *item* (vi), *and* 98, *item* (v))

The salaries and pensions of the following classes of persons are non-votable —

(*a*) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter,

(*b*) persons appointed before the first day of April, 1924, by the Governor-General in Council or by a Local Government to Services and posts classified as superior;

(*c*) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service,

(*d*) members of any Public Service Commission

The following sums payable to such persons fall also under item (vi) of paragraph 49, and item (v) of paragraph 98, namely —

Sums payable to, or to the dependants of, a person who is, or has been, in the service of the Crown in India under any Order made by the Secretary of State in Council, by a Secretary of State, by the Governor-General in Council, or by the Governor-General or by a Governor upon an appeal preferred to him in pursuance of Rules made under the Constitution Act

For the purposes of the proposals in this Appendix the expression " salaries and pensions " will be defined as including remuneration, allowances, gratuities, contributions, whether by way of interest or otherwise, out of the revenues of the Federation to any Provident Fund or Family Pension Fund, and any other payments or emoluments payable to, or on account of, a person in respect of his office

APPENDIX VIII

(See paragraphs 21 and 50 of Introduction and paragraph 4 of Introductory Note to Appendices IV and V)

SCHEDULED CASTES

I.—MADRAS

Race Tribe or Caste

1 Adi Andhra.
2 Adi Dravida.
3 Adi-Karnataka.
4 Ajila
5 Aranadan (also *P T)
6 Arunthuthiyar
7 Baira.
8 Bakuda.
9 Bandi
10 Bariki
11 Battada.
12 Bavuri.
13 Bellara.
14 Byagari
15 Chachati.
16 Chakkiliyan.
17 Chalavadi.
18 Chamar
19 Chandala.
20 Cheruman
21 Dandasi.
22 Devendrakulathan.
23 Dombo (also P T)
24 Ghasi
25 Godagali.
26 Godari.
27 Godda.
28 Gosangi.
29 Haddi
30 Hasla.
31 Holeya
32 Jaggali.
33 Jambuvulu.
34 Kadan (also *P T)
35 Kalladi.
36 Kanakkan.
37 Karimpalan (also P T)
38 Kattunayakan (also P T)
39 Kodalo.
40 Koosa.
41 Koraga.
42 Kudiya (also *P T)
43 Kudubi (also *P T)
44 Kudumban.
45 Kuravan.
46 Kurichchan (also *P T.)
47 Kuruman (also *P T)
48 Madari.
49 Madiga.
50 Maila.
51 Mala.
52 Mala Dasu.
53 Malasar (also P T)
54 Matangi.
55 Mavilan (also P T)
56 Moger
57 Muchi.
58 Mundala.
59 Nalakeyava.
60 Nayadi
61 Paga dai.
62 Paidi.
63 Painda.
64 Paky
65 Pallan.
66 Pambada.
67 Pamidi.
68 Panchama.
69 Paniyan.
70 Panniandi
71 Pano (also *P T)
72 Paraiyan.
73 Paravan.
74 Pulayan.
75 Puthirai Vannan.
76 Raneyar
77 Relli.
78 Samagara.
79 Samban.
80 Sapari.
81 Semman.
82 Thoti.
83 Tiruvalluvar
84 Valluvan.
85 Valmiki.
86 Vettuvan.

P T = Primitive Tribe.

II.—BOMBAY

1 Asodi
2 Bakads
3. Bhambi.
4 Bhangis
5 Chakrawadya-Dasar
6 Chambhar or Mochigar
7 Chelwadi
8 Chena-Dasaru
9 Chuhar (Chuhra)
10 Dakleru
11 Dhed
12 Dhegu-Megu
13 Dhors or Tanners
14 Garoda
15 Halleers
16 Halsar (Haslars) Halsavars.
17 Holiya
18 Khalpas
19 Koli Dhor
20 Kolghas or Kolchas
21 Kotegar (North Kanara only)
22 Lingaders
23 Mahar or Mhar
24 Mang and Madig
25 Mang Garudi
26 Megawal or Menghwar.
27 Mini-Madig
28 Mukris
29 Nadias
30 Samagars
31 Shindawa or Shenwas
32 Shingdav
33 Sochi or (Mochi except Gujerat where they are touchables)
34 Timalis
35 Turis or Drummers
36 Vitholia
37 Wankars

III.—BENGAL §

Agariya
Bagdi
Bahelia
Baiti
Bauri
Bediya
Beldar
Berua
Bhatiya
Bhuimali
Bhuiya
Bhunij
Bind
Binjhia
Chamar
Dhenuar
Dhoba
Doai
Dom
Dosadh
Garo
Ghasi
Gonrhi
Hadi
Hajang
Halalkhor
Hari
Ho
Jalia Kaibartta
Jhalo Malo or Malo
Kadar
Khaira
Kalwar
Kan
Kandh
Kandra
Kaora
Kapali
Kapuria
Karenga
Kastha
Kaur
Khandait
Khatik
Kichak
Koch
Konai
Konwar
Kora
Kotal
Lalbegi
Lodha
Lohar
Mahar
Mahli
Mal
Mallah
Malpahariya
Mech
Mehtor
Muchi
Munda
Musahar
Nagar
Nagesia
Naiya
Namasudra.
Nath
Nuniya
Oraon
Paliya
Pan
Pasi
Patni
Pod
Pundari
Rabha
Rajbanshi
Raju
Rajwar
Santal
Shagirdpesha
Sukli
Sunri
Tiyar
Turi

§ Provisional.

IV.—United Provinces

Luniya group—
Beldar
Kharot.

Chamar group—
Chamar
Dabgar
Gharami.

Bhangi group—
Balmiki.
Hari.
Hela.
Ravut.
Dhanuk.
Turaiha.
Lalbegi

Kolarian group—
Agariya.
Bhuiya.
Chero
Ghasiya.
Khairaha.
Kharwar (excluding Benbansi)

Kolarian group (contd.)—
Kol.
Korwa.
Majhwar
Pankha.
Parahiya.
Patari

Bayar group—
Banmanus
Dhangar

Dom group—
Balahar
Bansphor
Basor
Dharkar
Dom
Domar
Pan

Hill Dom group—
Hill Dom or Shilpkar
Saun.

Vagrant Tribes
Habura group—
Habura.
Bengali.
Beriya.
Bhantu
Kanjar
Karwal.
Sansiya.

Nat group—
Nat.
Badi.
Bajaniya.
Bajgi.
Gual.
Kalabaz.

Badhik group—
Badhik.
Barwar
Bawariya.
Boriya.
Sahariya.
Sanaurhiya.
Kapariya.

V.—Punjab

Ad Dharmis.
Bawaria.
Chamar
Chuhra.
Dagi and Koli.
Dumna.
Od
Sansi.
Sarera.
Marija (Marecha)
Bangali.
Barar
Bazigar
Bhanjra.
Chanal.
Dhanak.
Gagra.
Gandhila
Khatik.
Kori.
Nat.
Pasi.
Perna.
Sapela.
Sirkiband
Megh
Ramdasis.

VI.—Bihar and Orissa

*Bauri.
Bhogta.
Bhuiya.
Bhumij
Chamar
Chaupal.
Dhobi
Dosadh.
Dom.
*Ghasi.
Ghusuria.
Godra.
Gokha.
Halalkhor
Hari
Irika.
Kandra.
Kanjar
Kela.
Kurariar
Lalbegi.
Mahuria.
Mangan.
Mochi.
Musahar
Nat.
Pan.
Pasi
*Rajwar
Siyal.
*Turi

Scheduled castes in those localities which are not treated as backward tracts for the purpose of special representation of the aboriginals

VII.—Central Provinces with Berar.*

(1) Throughout the Central Provinces and Berar:—

Mehra or Mahar (except in the Harda tahsil and Sohagpur tahsil of Hoshangabad district), Basor or Burud, Mehtar or Bhangi, Dom, Chamar, Satnami, Mochi, Ganda, Mang.

(2) Throughout the Jubbulpore and Nerbudda divisions:—

Kori (except in the Harda and Sohagpur tahsils of Hoshangabad district), Mala, Balahi.

(3) Throughout the Nagpur and Berar divisons:—

Balahi, Madgi, Pradhan (except in Balaghat district), Ghasia, Katia, Panka, Khatik, Kaikari (except in Balaghat district), Dohor.

(4) Throughout the Chhattisgarh division:—

Ghasia, Katia, Panka, Dewar.

(5) Additional castes scheduled in the districts specified after their name:—

Panka (Saugor, Damoh, Chhindwara).
Katia (Saugor, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsils), Nimar, Betul, Chhindwara).
Khatik (Saugor, Hoshangabad (only in Hoshangabad tahsil), Chhindwara).
Dhobi (Saugor, Damoh, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsils), Bhandara, Raipur, Bilaspur, Buldana).
Khangar (Saugor, Damoh, Bhandara, Buldana, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsils)).
Chadar (Saugor, Damoh, Bhandara).
Dhanuk (Saugor).
Kumhar (Saugor, Damoh, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsil), Bhandara and Buldana).
Dahayat (Damoh).
Nagarchi (Mandla, Seoni, Chhindwara, Nagpur, Bhandara, Balaghat, Raipur).
Ojha (Mandla, Hoshangabad (only in Hoshangabad tahsil), Bhandara, Balaghat).
Pardhi (Narsinghpur).
Rujjhar (Hoshangabad (only in Sohagpur tahsil)).
Pradhan (Nimar, Chhindwara, Raipur).
Holiya (Bhandara, Balaghat).
Kori (Bhandara, Balaghat, Raipur, Amraoti, Buldana).
Audhelia (Bilaspur).
Chauhan (Drug).
Koli (Chanda, Bhandara).
Jangam (Bhandara).
Bedar (Amraoti, Akola, Buldana).
Bahna (Amraoti).
Dhimar (Bhandara, Buldana).
Mala (Balaghat).

* See Introduction, paragraph 45.

VIII.—ASSAM

1. *Assam Valley*—

Namasudra.	Hira
Kaibarta.	Sweeper
Bania (Brittial Bania)	

2. *Surma Valley*—

Mali (indigenous)	Sutradhar
Dhupi (Dhobi)	Muchi.
Dugla or Dholi	Patni.
Jhalo and Malo	Namasudra.
Yogi (Jugi or Nath)	Kaibarta (Jaliya)
Mahara.	Sweeper

3. The inclusion of the Suts (Borias) and Naths (Jogis or Katonis) of the Assam Valley in the scheduled castes is under investigation.

SECOND APPENDIX

Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.

TABLE OF CONTENTS

Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.

INTRODUCTION

The object of this Introduction is to explain in the broadest outline the changes in the government of Burma which would be brought about by the adoption of the proposals which follow

1 The principle underlying these proposals is that, in the event of Burma being separated from India, a unitary form of government would be set up there under a Constitution composed broadly speaking, on the same constitutional principles as have been embodied in the proposals made in regard to India. No attempt is made in this introduction to explain proposals common to both cases as such proposals have been fully explained in the Introduction to the Indian White Paper The essential difference between the two cases is that the Constitution for Burma would not be complicated by the special considerations arising from the concept of an Indian Federation and that the Government of Burma would accordingly combine in its own hands functions which, in the case of the proposals in the Indian White Paper have necessarily been distributed between the Federation and the Provinces. Differing circumstances have made it necessary to depart from the Indian model in the case of a few matters, but the close correspondence of the two sets of proposals is shown by the number of proposals in this paper which are set out in plain type, a device which indicates that they are in substance identical with although they necessarily differ in some respects in form from, corresponding provisions in the Indian proposals. References to the corresponding proposals in the Indian White Paper are indicated in the margin

2. It has in the past been suggested* that in view of the differences of race history culture and political development between India and Burma the linking of Burma to India in the last century for reasons of administrative convenience should not of necessity tie Burma to the same path of political progress as India and the view has been advanced that the Empire affords examples, such as are to be found in Ceylon and elsewhere, of other types of constitutional arrangement which might be more suited to the genius of the Burman people. But since the Government of India Act of 1919 Burma has been steadily carried forward by the tide of Indian reform, so that she now stands at the same point of political development as the other Provinces of British India. It does not therefore seem possible even if it were politically expedient, to contemplate either a different line of advance for Burma from that mapped out for India or a different rate of progress. This position was recognised by the Government of Burma in a Despatch of the 13th August, 1930 † in which they wrote —

> It is of great importance that it should be made clear beyond all possibility of doubt or question that the separation of Burma will not involve for Burma any departure from the statement contained in the preamble to the Government of India Act, 1919 that the objective of British policy is the progressive realisation of responsible government in British India as an integral part of the Empire. As the Commission‡ say that statement constitutes a pledge given by the British nation to British India. When the pledge was first announced in August, 1917 Burma

* Paragraph 198 Montagu-Chelmsford Report.
† Page 244 Cmd 3712 of 1930
‡ Simon Commission.

was a part of British India The pledge, therefore, was given to Burma as well as to India, and even if Burma is separated from India the pledge still stands for Burma unimpaired and in all its force The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject. They attach importance to the point, for the allegation is frequently made in that section of the public press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony "

3 The Burma Sub-Committee of the first Indian Round Table Conference included in its Report,* as its first recommendation, a request to His Majesty's Government—

> " to make a public announcement that the principle of separation is accepted, and that the prospects of constitutional advance towards responsible government held out to Burma as part of British India will not be prejudiced by separation "

The Indian Round Table Conference did not agree unanimously to the adoption of, and action on, this recommendation without further full consideration, but it was generally admitted that such further consideration was a matter between His Majesty's Government and the Burmans themselves, and that Indians would abide by the issue.

4 The next step was taken by the Secretary of State for India in answer to a question in the House of Commons on 20th January, 1931, when he made the following statement —

> " As my Right Hon Friend the Prime Minister stated yesterday in the final plenary session of the Round Table Conference, the Government have decided to proceed with the separation of Burma They wish it to be understood that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by this decision, and that the constitutional objective after separation will remain the progressive realisation of responsible government in Burma as an integral part of the Empire In pursuance of this decision they intend to take such steps towards the framing, in consultation with public opinion in Burma, of a new Constitution as may be found most convenient and expeditious, their object being that the new Constitutions for India and Burma shall come into force as near as may be simultaneously "

5 In pursuance of this announcement the Burma Round Table Conference was convened " for the purpose of seeking the greatest possible measure of agreement regarding the future Constitution of Burma and the relations of Burma with India," the primary task of the Conference being " to discuss the lines of a Constitution for a separated Burma "

The Conference sat from the 27th November, 1931, to the 12th January, 1932, and its Report disclosed a considerable measure of agreement between the delegates from Burma and those from Parliament upon the type and details of a Constitution for a separated Burma In the course of the Conference a statement was made on behalf of His Majesty's Government to the effect that the assurance given in the Prime Minister's statement on 19th January at the end of the first Indian Conference, and reiterated on 1st December, 1931, at the close of the second Conference, defining His Majesty's Government's policy towards India and her advance through the new Constitution with its reservations and safeguards for a transitional period to full responsibility for her own government, applied in principle equally to Burma The sketch of a Constitution for Burma outlined in some detail in the Prime Minister's statement at the end of the Burma Conference, and drawn up in

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* Page 50 of Cmd 3772 of 1931.

the light of the Conference discussions took therefore for its basic principle responsible government subject to certain safeguards in the field of administration which is now provincial, and subject to certain reservations as well as safeguards in the field now administered by the Central Government of India.

6 In his statement on 12th January 1932, the Prime Minister said, on behalf of His Majesty's Government, that if and when they were satisfied that the desire of the people of Burma was that the government of their country should be separated from that of India, they would take steps subject to the approval of Parliament, to give effect to this desire

In order to ascertain the desire of the people of Burma, advantage was to be taken of a general election to the Burma Legislative Council which was due to be held in the following autumn. At this election the question of separation was inevitably the main issue before the electorate But prior to the election a mass meeting of members of the various General Councils of Burmese Associations (who had hitherto refused to co-operate with the dyarchical Government in Burma, or even take part in elections) was held at the Jubilee Hall Rangoon, in the first week of July At this mass meeting it was resolved to form an Anti-Separation League. The policy of the League was laid down in five Resolutions, the effect of which was to reject the Constitution for a separated Burma outlined by the Prime Minister at the end of the Round Table Conference and to declare the League's opposition to separation from India on the basis of this Constitution to protest emphatically against the idea of permanent and unconditional inclusion in the Indian Federation and to continue opposition to separation till a Constitution be granted satisfactory and acceptable to the people of Burma. The meeting resolved also to take an active part in the impending election with a view to combating separation on the conditions held out by the Prime Minister's statement. The election was held in November 1932, and the electorate returned a majority of candidates describing themselves as Anti Separationists and as adherents to the policy adopted by the Anti Separation League formed at the Jubilee Hall meeting

7 In December 1932, the question of separation from India on the basis of the Constitution outlined by His Majesty's Government, or of inclusion as a British Indian Province in the Indian Federation formed the subject of a protracted debate in the Burma Legislative Council. The Council eventually on 22nd December adopted a Resolution which was identical in substance and almost in terms with those adopted at the Jubilee Hall meeting It (1) opposed the separation of Burma from India on the basis of the Constitution outlined by the Prime Minister on 12th January 1932 (2) emphatically opposed the unconditional and permanent federation of Burma with India (3) promised continued opposition to the separation of Burma from India except on certain conditions and (4) proposed that, in the event of these conditions not being fulfilled, Burma should be included in the Indian Federation on special conditions differentiating her from other Provinces and including the right to secede at will from the Federation

8. Such a Resolution indicated no clear choice between the alternatives that had been placed before the Council. But it was hoped that, in the light of the Indian White Paper published in March 1933 and in the light also of the statement made by the Secretary of State for India on 20th March in answer to questions in the House of Commons as to the nature of the two alternatives still open for choice by Burma, the Burma Legislative Council might yet give a less equivocal indication of the desire of the people of Burma in respect of the two courses offered Accordingly a special session of the Council was at the request of the majority of the party leaders summoned for 25th April, 1933 and was held between that date and 6th May

This special session proved entirely unfruitful It was prorogued on 6th May without any resolution being adopted either for Burma's inclusion

in the Indian Federation or for the separation of her government from that of India As a result, there is available no other authoritative indication of the considered view of the representatives of the people of Burma as to the course which should be adopted than that contained in the negative and conditional Resolution of 22nd December, 1932

In the second paragraph of that Resolution the Burma Legislative Council expressed itself as emphatically opposed to unconditional and permanent federation with India, and such further evidence as has since accumulated regarding the attitude of the people and political parties of Burma, including statements by party leaders, points to the conclusion that, whatever division of opinion may exist in Burma as to the merits of the Constitution outlined in the Prime Minister's statement, there is an almost unanimous opinion in favour of ultimate separation from India and against federation on the same terms as the other Provinces of India

GENERAL DESCRIPTION OF THE SCHEME

9 Before examining the scheme in detail it is desirable in the first place to refer to a question affecting the position within the Empire of a Burma separated from India. Unless provision to the contrary is made, the moment Burma ceases to be part of British India she will, by virtue of the Interpretation Act, 1889, which defines a "Colony" as "any part of His Majesty's dominions exclusive of the British Islands and of British India," automatically become "a Colony" for all purposes of English law Although there is no necessary connection between the status of a "Colony" and that of a "Crown Colony," it is clearly desirable that the position of Burma should be unambiguous, and it would be necessary to insert in the Constitution a provision to the effect that, notwithstanding anything in the Interpretation Act, the expression "Colony" in any Act of the Parliament of the United Kingdom should not include Burma At the same time provision would be made to ensure that Acts of Parliament which have hitherto applied to Burma as part of British India should continue to do so

10 The separation of Burma from India would also require on the financial side that arrangements should be made for an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act, and provision would have to be made in the Act to give statutory effect to such determination and to such agreements as might be made thereunder by the respective Governments of the two countries

11 In view of the fact that, as already pointed out, the constitutional principles underlying this scheme are substantially the same as those which have been applied in relation to the Indian proposals, much that has been said in the Indian White Paper is applicable also to the present proposals But it is believed that the nature of the present proposal will more readily be understood if a short description of their general purport is given at the outset.

12 The scheme proposed is for an Executive consisting of the Governor as representing the Crown, aided and advised by a Council of Ministers responsible (subject to the qualifications to be explained later) to a Legislature composed of two Houses and consisting as to the Upper Chamber of 36 members, of whom one-half would be elected by the Lower Chamber and one-half would be non-official persons nominated by the Governor in his discretion for the purpose of making the Chamber as fully representative as possible of the interests of all sections of the community The Lower Chamber would consist of rather more than 130 members, of whom a proportion would represent minorities and special interests

13 In the Government so composed would be concentrated all the functions which, in the case of India, are proposed to be divided between the Federal and Provincial Authorities But, as in India, the transfer of responsibility would not be complete Certain Departments, namely those concerned with

Defence External Affairs Ecclesiastical Affairs and the Affairs of Excluded Areas (to be called in the case of Burma, Schedule A areas ') to which for reasons presently to be explained would be added in the case of Burma, the control of monetary policy currency and coinage would be entrusted to the Governor personally and these matters he would control in responsibility to His Majesty's Government and Parliament. The Governor would also be given powers similar to those proposed to be conferred on the Governor General and Governors in India in relation to dissolution of the Legislature refusal of assent to Bills the grant of previous sanction to the introduction of certain classes of legislation etc. The administration of all other matters would be transferred to Ministers responsible to the Legislature but the Governor again following the proposals made in relation to India, would be declared to have a special responsibility for certain matters namely —

(a) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof

(b) the safeguarding of the financial stability and credit of Burma

(c) the safeguarding of the legitimate interests of minorities

(d) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests

(e) the prevention of commercial discrimination

(f) the administration of the areas named in Schedule B to the Constitution Act

(g) any matter which affects the administration of any department of government under the direction and control of the Governor

The effect of entrusting these responsibilities to the Governor and the manner in which it is anticipated they would be discharged are described in the Indian White Paper and it has not been thought necessary to reproduce here what is said in that Paper

14 It is now possible to draw attention to the points in regard to which it has been thought the special requirements of Burma would make some divergence from the Indian proposals desirable and to indicate the effect of those divergences.

15 In the first place it will be observed that it is proposed that the control of monetary policy currency and coinage should be treated as a reserved subject. The reasons for this proposal are two-fold. Burma would at the outset be within the currency system of India, and it is likely to be some time before conditions would render it possible for her to adopt a separate currency system of her own the subject, moreover is one in regard to which Burma possesses no expert knowledge It is, therefore, proposed that these matters should be under the personal control of the Governor who would be empowered to appoint a Financial Adviser directly responsible to him.

16 The different composition proposed for the Burma Legislature is, of course mainly due to the absence of the detailed arrangements involved in the accession of the Indian States to the Indian Federation, but also in part to the fact that the communal difficulties which have necessitated special arrangements in India have, practically speaking no counterpart in Burma.

17 The importance to Burma of the immigration problem might also render it necessary to make some special provision in this respect.

18. Again, in regard to the administration of what, in the case of India, have been described as Excluded or Partially Excluded areas conditions in Burma may demand slightly different treatment. Detailed provisions for the treatment of such areas in Burma have therefore been excluded from the scope of this tentative scheme It is proposed in the case of Burma that the areas falling within the two categories mentioned above should be enumerated in two separate Schedules A and B to the Constitution Act,

and it will therefore be convenient to refer to them as Schedule A or Schedule B areas rather than Wholly or Partially Excluded areas A provisional list of these areas will be found in Appendix II

THE PUBLIC SERVICE

19 As regards the All-India Services, Burma, like any other Indian Province, is at present served by the Indian Civil Service, the Indian Police, and the Indian Service of Engineers But since the last instalment of reforms, when the administration of forests was made a transferred subject in Burma and Bombay, recruitment to the Indian Forest Service in Burma has ceased, recruitment now being made instead by the Local Government to the Burma Forest Service (Class I) As in the case of India, it is proposed that under the new Constitution recruitment should cease in Burma for the Indian Service of Engineers As regards the Indian Civil Service and the Police, the Services which would correspond to these in Burma in future would, of course, be differently named, but the Secretary of State would continue to recruit Europeans to them in the same proportion as at present, pending a statutory enquiry into the recruitment question, which would take place after a period to be determined (*see* proposal 93)

20 Burma is also served by officers of the Central Services, *e g*, the Railway Services, the Indian Audit and Accounts Service, the Indian Posts and Telegraphs, and the Imperial Customs Service Members of these Services remaining in Burma would be absorbed in new Services administered by the Government of Burma independently of the Government of India

21 As regards Central Service officers now serving in Burma, some were recruited by the Government of India for service in Burma alone, others were recruited either by the Secretary of State or the Government of India without special reference to service in Burma Officers falling in the first category would be compulsorily transferred to the service of the Government of Burma Transfer to the Government of Burma of officers falling in the second category would be subject to the consent of the officers themselves and of the authority which appointed them, and would be a matter for arrangement between the Governments of India and Burma

22 In addition to the ordinary Provincial Service, which covers the whole of the civil administration in the middle and lower grades, Burma possesses the Burma Frontier Service This Service is now controlled and recruited by the Local Government, but many of its members, in common with many members of the Provincial Services, have rights guaranteed by the Secretary of State In view of the fact that if Burma were separated from India most of the officers of the Burma Frontier Service would serve in areas under the sole control of the Governor, it would seem proper that the Service should be recruited and controlled by the Governor acting in his discretion

23 Existing service rights of present members of the above-mentioned Services would be preserved under the Constitution Act, subject to a few inevitable changes of which an example is that persons appointed by the Government of India would on transfer to service in Burma cease to be liable to dismissal by the Governor-General and become instead liable to dismissal by the Governor of Burma The principal changes of this kind are indicated against notes in the Proposals Persons appointed in future by the Secretary of State to the Services which would replace the Indian Civil Service and the Indian Police would enjoy the same rights as persons appointed by the Secretary of State to the Indian Civil Service and the Indian Police before the Constitution Act comes into force, except that in the first instance the right to retire under the regulations for premature retirement would, in the case of officers recruited after the inauguration of the new Constitution, extend only to those appointed before the decision to be taken regarding future recruitment following upon the statutory enquiry referred to in paragraph 19 above The right to retire under those regulations would not be enjoyed by officers

serving permanently in Departments under the direct control of the Governor but it would be extended to those officers of the present Central Services (Class I) who were appointed by the Secretary of State and who might be transferred permanently to Departments handed over to the control of Ministers in Burma.

24 As in the case of India, provision would be made for continued recruitment by the Secretary of State to the Ecclesiastical Department. The question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination

25 As regards Family Pension Funds officers in Burma who before the coming into force of the Constitution Acts were members of one of the All-India Family Pension Funds would be permitted to retain their membership of such Fund.

NOTE.—*The use of italics in the following proposals indicates a divergence from the proposals of the Indian White Paper* (*Cmd* 4268 *of* 1933).

Num corres prop India P

THE PROPOSALS

General.

1. The general principle underlying all these proposals is that all powers appertaining or incidental to the government of the territories for the time being belonging to His Majesty the King in Burma and all rights, authority and jurisdiction possessed in that country—whether flowing from His Majesty's sovereignty over the Province of Burma, or derived from treaty, grant, usage, sufferance or otherwise in relation to other territories—are vested in the Crown and are exercisable by and in the name of the King

2. *The territories belonging to His Majesty the King in Burma will be declared to be those which at the date of coming into force of the Act constitute the Province of Burma in British India* The date of the coming into force of the Act will be fixed by Royal Proclamation

3. *Provision will be made to except Burma from the definition of " Colony " in the Interpretation Act* *

4. *Provision will be made for the continuance in force, until repealed by competent authority, of all laws of the Parliament of the United Kingdom which at present apply to Burma as part of British India, of laws of the Indian Legislature which apply to Burma, and of laws passed by the existing Burma Legislature, together with the body of rules, notifications and instructions issued under these laws*

5. *It will be declared that all rights and obligations under international treaties, conventions or agreements which before the commencement of the Constitution Act were binding upon Burma as part of British India shall continue to be binding upon her* †

The Executive

6. The executive authority in Burma, including the supreme command of the Military, Naval and Air Forces in Burma, will be exercisable on the King's behalf by a Governor holding office during His Majesty's pleasure, *who will also be Commander-in-Chief* ‡

All executive acts will run in the name of the Governor

7. The Governor will exercise the powers conferred upon him by the Constitution Act as executive head in Burma and such powers of His Majesty (not being powers inconsistent with the provisions of the Constitution Act)

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* The object of proposals 3 and 4 is to ensure that all legislation and regulations which at present apply to Burma as part of British India still continue to apply to her, and to prevent the separation of Burma from British India from bringing her within the ambit of Imperial laws passed with reference to " Colonies " as defined in the Interpretation Act, 1889, *i e*, " any part of His Majesty's Dominions exclusive of the British Islands and of British India " *See* paragraph 9 of Introduction

† A similar provision is to be found in section 148 (1) of the South Africa Act Whether or not such a provision is necessary or desirable in the Indian Constitution Act, it seems clearly desirable in the case of a separated Burma, to make it clear beyond doubt, on the lines of proposal 4, that all obligations hitherto binding upon Burma as part of British India shall continue to apply to her unless and until abrogated by competent authority

‡ The Indian White Paper proposes to continue the separate appointment of a Commander-in-Chief in India No corresponding appointment seems either necessary or desirable in the case of Burma, in view of the smaller size of the military forces concerned But it is thought desirable to invest the Governor with the title of Commander-in-Chief to emphasise the fact that the executive military power is vested in him

as His Majesty may be pleased by Letters Patent constituting the office of Governor to assign to him In exercising all these powers the Governor will act in accordance with an Instrument of Instructions to be issued to him by the King

9 8. The draft of the Governor s Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment, or addition to or omission from the Instructions.

10 9 The Governor's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances or of salaries and allowances of his personal and secretarial staff will be fixed by Order in Council none of these payments will be subject to the vote of the Legislature

THE WORKING OF THE EXECUTIVE.

11 and 107 10. The Governor will himself direct and control the administration of certain Departments of State—namely Defence, External Affairs, Ecclesiastical Affairs—and also the affairs of the areas named in Schedule A to the Constitution Act,* *and monetary policy currency and coinage* †

12 11. In the administration of these Reserved Departments the Governor will be assisted by one or more Counsellors, not exceeding three in number who will be appointed by the Governor and whose salaries and conditions of service will be prescribed by Order in Council. *Of these Counsellors one may at the discretion of the Governor be appointed to be Financial Adviser*

13 12 For the purpose of aiding and advising the Governor in the exercise of powers conferred upon him by the Constitution Act, other than powers connected with the matters mentioned in paragraph 10 and matters left by law to his discretion there will be a Council of Ministers The Ministers will be chosen and summoned by the Governor and sworn as Members of the Council and will hold office during his pleasure. The persons appointed Ministers must be or become within a stated period, members of one or other Chamber of the Legislature

14 13. In his Instrument of Instructions the Governor will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner that is in consultation with the person who in his judgment, is likely to command the largest following in the Legislature to appoint those persons who will best be in a position collectively to command the confidence of the Legislature

15 14. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Legislature but until the Legislature otherwise determines their number and their salaries will be such as the Governor determines subject to limits to be laid down in the Constitution Act.

The salary of a Minister will not be subject to variation during his term of office

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* See paragraph 18 of the Introduction.

† In the case of the Indian Federation it is proposed to transfer the whole subject of Finance to the charge of a responsible Minister but subject to the prior establishment and successful operation of a Reserve Bank and subject to a special responsibility laid upon the Governor-General for the preservation of the financial stability and credit of the Federation. There is no proposal to set up a Reserve Bank in Burma. In the case of Burma it is proposed subject to a special responsibility of the same kind as that it is proposed to impose upon the Governor-General in India, to transfer the general subject of Finance to Ministerial control, but to reserve Monetary policy currency and coinage to the Governor as a department in his sole charge (assisted by a Financial Adviser) It is, however proposed that, for some time to come Burma should continue within the Indian currency system.

15. The Governor will, whenever he thinks fit, preside at meetings of his Council of Ministers He will also be authorised, after consultation with his Ministers, to make at his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself and to his Counsellors in the Reserved Departments, and to the Financial Adviser, of all such information as he may direct 16

16. The Governor will be empowered, at his discretion, after consultation with Ministers, to appoint a Financial Adviser to assist him, and also to advise Ministers on matters regarding which they may seek his advice The Financial Adviser will be responsible to the Governor and will hold office during pleasure, his salary and conditions of service will be fixed by the Governor in his discretion, and will not be subject to the vote of the Legislature. 17

17. Apart from his exclusive responsibility for the Reserved Departments (proposal 10), the Governor will be declared to have a "special responsibility"* in respect of— 18 and 70

(*a*) The prevention of any grave menace to the peace or tranquillity of Burma or any part thereof,
(*b*) the safeguarding of the financial stability and credit of Burma;
(*c*) the safeguarding of the legitimate interests of minorities,
(*d*) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests,
(*e*) the prevention of commercial discrimination,
(*f*) the administration of the areas named in Schedule B to the Constitution Act †
(*g*) any matter which affects the administration of any department of government under the direction and control of the Governor

It will be for the Governor to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances

18. If in any case in which, in the opinion of the Governor, a special responsibility is imposed upon him it appears to him, after considering such advice as has been given him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions 19

19. The Governor in administering the Departments under his own direction and control, in taking action for the discharge of any special responsibility, and in exercising any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by a principal Secretary of State 20

20. The Governor's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines —

"In matters arising in the Departments which you direct and control on your own responsibility, or in matters the determination of which is by law committed to your discretion, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such a manner as you may judge right and expedient for the good government of Burma, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State 21

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* See paragraphs 25 and 47 of the Introduction in the Indian White Paper
† See paragraph 18 of Introduction

In matters arising our of the exercise of powers conferred upon you for the purposes of the government of Burma other than those specified in the preceding paragraph it is Our will and pleasure that you should in the exercise of the powers by law conferred upon you be guided by the advice of your Ministers unless so to be guided would in your judgment be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you in which case it is Our will and pleasure that you should notwithstanding your Ministers advice act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however to such directions as you may from time to time receive from one of Our principal Secretaries of State

THE LEGISLATURE.*

General

22 21 The Legislature will consist of the King represented by the Governor and two Chambers to be styled the Senate and the House of Representatives and will be summoned to meet for the first time not later than a date to be specified in the Proclamation which fixes a date for the coming into force of the Act.

Every Act of the Legislature will be expressed as having been enacted by the Governor by and with the consent of both Chambers

23 22. Power to summon and appoint places for the meeting of the Chambers to prorogue them and to dissolve them either separately or simultaneously will be vested in the Governor at his discretion subject to the requirement that they shall meet at least once in every year and that not more than 12 months shall intervene between the end of one session and the commencement of the next

The Governor will also be empowered to summon the Chambers for the purpose of addressing them

24 23. Each House of Representatives will continue for five years unless sooner dissolved *No term will be fixed to the life of the Senate*

25 24. A Member of the Council of Ministers will have the right to speak, but not to vote in the Chamber of which he is not a Member

A Counsellor will be *ex-officio* an additional member of both Chambers for all purposes except the right of voting

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* The proposals for the constitution of the Legislature are modelled closely on those for the Indian Federal Legislature but it is not possible for them to correspond exactly Such minor differences as are suggested rest on the conclusions of the Burma Round Table Conference or upon the advice of the Governor of Burma. The reason for these differences is that the circumstances in Burma differ from those which exist in India. In the first place the communal problem in the Indian sense does not exist in Burma, and apart from special provision for the reasonable representation of certain well-defined minority communities such as the Indian and European, it is proposed that members of the Lower Chamber in Burma should be elected by general constituencies on a common franchise. Secondly there are no States to which special representation in the Legislature requires to be given. It is proposed that the Upper Chamber in Burma should be constituted as to half of its 36 members by election by the Lower Chamber and that the remaining half should consist of non-officials nominated by the Governor in his discretion, with the object of making the Upper Chamber as far as possible fully representative of the interests of different sections of the population (proposal 25) The Government of Burma advocate a minimum age limit of 35 for membership of the Burma Senate but as a limit of 30 has been proposed for Second Chambers in the Indian Provinces proposal 26 makes no specific suggestion. It is also proposed that, subject to the Governor's power of dissolution in exceptional circumstances, the life of the Upper Chamber should not be subject to termination (proposal 23) Some device is, however required to ensure that it remains in touch with public opinion. It is therefore proposed (proposal 28) that one-quarter of the members should retire every two years.

The only other point of difference in this connection from the Indian proposals is that in the case of Burma it is proposed (proposal 37) that the powers of the two Chambers should be entirely equal except for the vesting of Supply in the Lower Chamber alone, while in the case of the Indian Federal Legislature not only Supply, but also the initiation of Money Bills, rests with the Lower House alone, subject, as regards Supply, to a power in the Upper Chamber, if a motion to that effect is moved on behalf of Government, of requiring a Joint Session to be called if it disapproves of a reduction or rejection of any Demand by the Lower Chamber

The Composition of the Chambers

25 The Senate will consist, apart from the Governor's Counsellors, *of not more than 36 members of whom 18 will be elected by the House of Representatives and 18 (who shall not be officials) will be nominated by the Governor in his discretion* 26

26. A member of the Senate will be required to be *not less than* (30 *or* 35) *years of age* and a British subject, and to possess certain prescribed property qualifications, or to possess qualifications to be prescribed by the Governor with a view to conferring qualification upon persons who have rendered distinguished public service 27

27. If the seat of a Senator becomes vacant, his place will be filled either by election by the House of Representatives or by nomination by the Governor, according to the method by which he had himself obtained his seat 28

28. *One-quarter of the Senators will retire at the expiration of every period of two years, this quarter being composed alternately of one-half of the nominated members and one-half of the elected members, the first quarter to retire to consist of nominated members The selection of those Senators who are to retire at the expiration of the first two periods of two years after the first summoning of the Senate to be determined by lot (Subject to the above arrangements the tenure of seats to be for eight years)*

29. The House of Representatives will consist, apart from the Governor's Counsellors, *of* [133] *members, of whom* 119 *will be elected to represent general constituencies and* 14 *elected to represent special constituencies* 29

30. A member of the House of Representatives will be required to be not less than 25 years of age and a British subject 30

31 Casual vacancies in the House of Representatives will be filled by the same method as that followed in the case of the election of the vacating member 31

32. Every member of either Chamber will be required to make and subscribe an oath or affirmation in the following form before taking his seat — 33

"I, A B, having been elected / nominated a member of this Senate / House of Representatives, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter"

33. The following disqualifications will be prescribed for membership of either Chamber — 34

(a) in the case of elected members or of members nominated by the Governor, the holding of any office of profit under the Crown other than that of Minister,

(b) a declaration of unsoundness of mind by a competent Court,

(c) being an undischarged bankrupt,

(*d*) conviction of the offence of corrupt practices or other election offences

(*e*) in the case of a legal practitioner suspension from practice by order of a competent Court

but provision will be made that the last two disqualifications may be removed by order of the Governor at his discretion

(*f*) having an undisclosed interest in any contract with the Government, provided that the mere holding of shares in a company will not by itself involve this disqualification.

35 34. A person sitting or voting as a member of either Chamber when he is not qualified for or is disqualified from membership will be made liable to a penalty of in respect of each day on which he so sits or votes, to be recovered in the High Court by suit instituted with the consent of a Principal Law Officer of the Government.

36 35. Subject to the Rules and Standing Orders affecting the Chamber there will be freedom of speech in both Chambers of the Legislature. No person will be liable to any proceedings in any Court by reason of his speech or vote in either Chamber or by reason of anything contained in any official report of the proceedings in either Chamber

37 36. The following matters connected with elections and electoral procedure in so far as provision is not made by the Act, will be regulated by Order in Council —

(*a*) The qualifications of electors

(*b*) The delimitation of constituencies

(*c*) The method of election of representatives of minorities and other interests

(*d*) the filling of casual vacancies and

(*e*) Other matters ancillary to the above

with provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament.

For matters other than the above connected with the conduct of elections the Legislature will be empowered to make provision by Act. But until the Legislature otherwise determines existing laws or rules including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections will remain in force, subject, however to such modifications or adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution.

Legislative Procedure

38 37 Bills may be introduced in either Chamber

39 38. The Governor will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure. But before taking any of these courses it will be open to the Governor to remit a Bill to the Chambers with a Message requesting its reconsideration in whole or in part, together with such amendments, if any as he may recommend

Without prejudice to the provisions of proposal 40 no Bill will become law until it has been agreed to by both Chambers either without amendment or with such amendments only as are agreed to by both Chambers and has been assented to by the Governor or in the case of a reserved Bill until His Majesty in Council has signified his assent.

39. Any Act assented to by the Governor will within twelve months be subject to disallowance by His Majesty in Council 40

40. In the case of disagreement between the Chambers, the Governor will be empowered, in any case in which a Bill passed by one Chamber has not, within three months thereafter, been passed by the other, either without amendments or with agreed amendments, to summon the two Chambers to meet in a joint sitting for the purpose of reaching a decision on the Bill The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other Any such amendments which are affirmed by a majority of the total number of members voting at the Joint Session will be deemed to have been carried, and if the Bill, with the amendments, if any so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers 41

In the case of a Money Bill, or in cases where, in the Governor's opinion, a decision on the Bill cannot, consistently with the fulfilment of his responsibilities for a Reserved Department* or of any of his "special responsibilities," be deferred, the Governor will be empowered in his discretion to summon a Joint Session forthwith

41. In order to enable the Governor to fulfil the responsibilities imposed upon him personally for the administration of the Reserved Departments and his "special responsibilities," he will be empowered at his discretion— 42

(*a*) to present, or cause to be presented, a Bill to either Chamber, and to declare by Message to both Chambers that it is essential, having regard to his responsibilities for a Reserved Department or, as the case may be, to any of his "special responsibilities," that the Bill so presented should become law before a date specified in the Message , and

(*b*) to declare by Message in respect of any Bill already introduced in either Chamber that it should for similar reasons become law before a stated date in a form specified in the Message

A Bill which is the subject of such a Message will then be considered or reconsidered by the Chambers, as the case may require, and if, before the date specified, it is not passed by the two Chambers, or is not passed by the two Chambers in the form specified, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by either Chamber after receipt of his Message

A Governor's Act so enacted will have the same force and effect as an Act of the Legislature, and will be subject to disallowance in the same manner, but the Governor's competence to legislate under this provision will not extend beyond the competence of the Legislature as defined by the Constitution

42 It will be made clear by means of the enacting words of a Governor's Act, which will be distinguished from the enacting words of an ordinary Act (see proposal 21), that Acts of the former description are enacted on the Governor's own responsibility 43

43. Provision will also be made empowering the Governor in his discretion, in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of Burma, to direct that the Bill, clause or amendment shall not be further proceeded with 44

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* These responsibilities cover all matters specified in proposal 10

Procedure with regard to Financial Proposals

45 44. A recommendation of the Governor will be required for any proposal in either Chamber of the Legislature for the imposition of taxation, for the appropriation of public revenues or any proposal affecting the public debt or affecting, or imposing any charge upon, public revenues *

46 45 The Governor will cause a statement of the estimated revenue and expenditure together with a statement of all proposals for the appropriation of those revenues to be laid in respect of every financial year before both Chambers of the Legislature

The statement of proposals for appropriation will be so arranged as—

(a) to distinguish between those proposals which will and those which will not (see proposal 47) be submitted to the vote of the Legislature and amongst the latter to distinguish those which are in the nature of standing charges (for example the items marked † in the list in proposal 47) and

(b) to specify separately those additional proposals (if any) whether under the Votable or non Votable Heads which the Governor regards as necessary for the discharge of any of his special responsibilities

47 46 The proposals for the appropriation of revenues other than proposals relating to the Heads of Expenditure enumerated in paragraph 47 and proposals (if any) made by the Governor in discharge of his special responsibilities will be submitted in the form of Demands for Grants to the vote of the House of Representatives The House of Representatives will be empowered to assent or refuse assent to any Demand or to reduce the amount specified therein whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it.

49 47 Proposals for appropriations of revenues if they relate to the Heads of Expenditure enumerated in this paragraph will not be submitted to the vote of either Chamber of the Legislature but will be open to discussion in both Chambers except in the case of the salary and allowances of the Governor

The Heads of Expenditure referred to above are —

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising service and management of loans† expenditure fixed by or under the Constitution Act† expenditure required to satisfy a decree of any Court or an arbitral award

(ii) The salary and allowances of the Governor† of Ministers† of the Governor s Counsellors† of the Financial Adviser† of the Governor s personal and secretarial staff and of the staff of the Financial Adviser

(iii) Expenditure required for the Reserved Departments‡ or for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State

(iv) The salaries and pensions (including pensions payable to their dependants) of Judges of the High Court† and expenditure certified by the Governor after consultation with his Ministers as required for the expenses of that Court.

(v) Salaries and pensions payable to or to the dependants of certain members of the Public Services and certain other sums payable to such persons §

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* This paragraph represents the constitutional principle embodied in Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire —

"This House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament, unless recommended from the Crown.

‡ i e *all* the matters specified in proposal 10

§ See Appendix I Part III.

The Governor will be empowered to decide finally and conclusively, for all purposes, any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph

48. At the conclusion of the budget procedure the Governor will authenticate 50
by his signature all appropriations whether voted or those relating to matters enumerated in proposal 47; the appropriations so authenticated will be laid before both Chambers of the Legislature, but will not be open to discussion

In the appropriations so authenticated the Governor will be empowered to include any additional amount which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation

The authentication of the Governor will be sufficient authority for the due application of the sums involved

49. The provisions of proposals 44 to 48 inclusive will apply with the 51
necessary modifications to proposals for the appropriation of revenues to meet expenditure not included in the Annual Estimates which it may become necessary to incur during the course of the financial year

Procedure in the Legislature

50 The procedure and conduct of business in each Chamber of the Legis- 52
lature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber, but the Governor will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—

(*a*) regulating the procedure of, and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments, or any other special responsibilities with which he is charged, and

*(*b*) prohibiting, save with the prior consent of the Governor given at his discretion, the discussion of or the asking of questions on any matter affecting relations between His Majesty or the Governor and any foreign Prince or State

In the event of conflict between a rule so made by the Governor and any rule made by the Chamber, the former will prevail and the latter will, to the extent of the inconsistency, be void

Emergency Powers of the Governor in relation to Legislation

51. The Governor will be empowered at his discretion, if at any time he is 53
satisfied that the requirements of the Reserved Departments, or any of the "special responsibilities" with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Legislature to enact

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein, the Governor will, however, have power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament

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* Some provision will also be required on lines of proposal 109 of the Indian White Paper, having due regard to the fact that the areas in Burma which will correspond to Excluded and Partially Excluded Areas in India may require slightly different treatment

An Ordinance will have the same force and effect whilst in operation as an Act of the Legislature but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts and will be subject to withdrawal at any time by the Governor

54 52. In addition to the powers to be conferred upon the Governor at his discretion in the preceding paragraph the Governor will further be empowered if his Ministers are satisfied at a time when the Legislature is not in session, that an emergency exists which renders such a course necessary to make and promulgate any such Ordinances for the good government of Burma, or any part thereof as the circumstances of the case require containing such provisions as, under the Constitution Act it would have been competent for the Legislature to enact

An Ordinance promulgated under the proposals contained in this paragraph will have while in operation, the same force and effect as an Act of the Legislature, but every such Ordinance—

(a) will be required to be laid before the Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature unless both Chambers have in the meantime disapproved it by Resolution, in which case it will cease to operate forthwith and

(b) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an Act of the Legislature it will also be subject to withdrawal at any time by the Governor

Provisions in the event of a Breakdown in the Constitution

55 53. The Governor will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the Government to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any authority in Burma, as appear to him to be necessary for the purpose of securing that the Government shall be carried on effectively

A Proclamation so issued will have the same force and effect as an Act of Parliament will be communicated forthwith to a Secretary of State and laid before Parliament will cease to operate at the expiry of six months unless before the expiry of that period, it has been approved by Resolutions of both Houses of Parliament and may at any time be revoked by Resolutions by both Houses of Parliament.

Powers of the Legislature

Replaces proposals 111 to 8 of the Indian White Paper

54. *Subject to any special provisions that may be made in respect of the areas to be named in Schedules to the Constitution Act the Legislature will have power to make laws—*

(a) for all persons courts places and things within the territories for the time being belonging to His Majesty in Burma and

(b) for all subjects of His Majesty and servants of the Crown in Burma but without and beyond the territories for the time being belonging to His Majesty

(c) for all subjects of His Majesty being of Burma domicile without and beyond the confines of Burma and

(d) for the raising maintaining disciplining and regulating of officers sailors marines soldiers airmen and followers in his Majesty's Burma forces where ever they are serving in so far as they are not subject to the Naval Discipline Act or the Army Act or the Air Force Act or to any similar law enacted by the competent authority in India

The power to make laws as above will include the power to repeal or amend laws enacted before the separation of Burma from India, by the Indian Legislature or the Provincial Legislature of Burma

55. It will be outside the competence of the Legislature to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of Burma or the law of British nationality. It will similarly not be competent to make any law affecting the Naval Discipline Act, the Army Act and the Air Force Act, *or any similar laws enacted by the competent authority in India. It will also be provided that all authorities in Burma shall give full effect to such Indian laws in respect of persons in Burma to whom they apply.* Neither will the Legislature be able to amend the Constitution Act except in so far as the Act itself provides. 110

56. Subject as above, the consent of the Governor, given at his discretion, will be required to the introduction in the Legislature of legislation which repeals or amends or is repugnant to any Act of Parliament extending to Burma, or any Governor's Act or Ordinance* or which affects any Department or matter reserved for the control of the Governor, or religion or religious rites and usages, or the procedure regulating criminal proceedings against European British subjects. 119

57. The giving of consent by the Governor to the introduction of a Bill will be without prejudice to his power of withholding his assent to, or of reserving, the Bill when passed; but an Act will not be invalid by reason only that prior consent to its introduction was not given, provided that it was duly assented to by the Governor, or by His Majesty in the case of Bills reserved for His Majesty's pleasure. 121

58. The Legislature will have no power to make laws subjecting in Burma any British subject (including companies, partnerships or associations incorporated by or under any law in force in Burma), in respect of taxation, the holding of property, the carrying on of any profession, trade, business or occupation, or the employment of any servant or agent or in respect of residence or travel within the boundaries of Burma, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth; but no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law. 122

A law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor, at his discretion, to be necessary in the interests of the peace and tranquillity of Burma or any part thereof.

59. The Legislature will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies and partnerships incorporated or constituted by or under the laws of the United Kingdom) to any disability or discrimination in the exercise of certain specified rights, if a Burman subject of His Majesty or a company, &c., constituted by or under the law in force in Burma, as the case may be, would not, in the exercise in the United Kingdom of the corresponding right, be subject in the United Kingdom to any disability or discrimination of the same or a similar character. The rights in question are the right to enter, travel and reside in any part of Burma; to hold property of any kind; to carry on any trade or business in, or with the inhabitants of, Burma; and to appoint and employ at discretion, agents and servants for any of the above purposes. 123

Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in Burma and the United Kingdom.

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* A Governor's Ordinance for the purpose of this proposal means an Ordinance as described in proposals 51 and 52.

60 *It will be necessary to consider whether the principles underlying proposal 59 should be adopted as between Burma and India*

124 61. An Act of the Legislature, however which with a view to the encouragement of trade or industry authorises the payment of grants, bounties or subsidies out of public funds, will not be held to fall within the terms of paragraphs 58 and 59 by reason only of the fact that it is limited to persons or companies resident or incorporated in Burma, or that it imposes on persons or companies not trading in Burma before such Act was passed as a condition of eligibility for any such grant, bounty or subsidy that a company shall be incorporated by or under the laws of Burma, or conditions as to the composition of the Board of Directors or as to the facilities to be given for training Burmans.

62. Provision will require to be made in regard to the registration in Burma of medical practitioners registered in the United Kingdom and in India. (*See* footnote to proposal 123 of the Indian White Paper)

Financial Powers and Relations

Property Contracts and Suits

130 63. All legal proceedings which may be at present instituted by or against the Secretary of State in Council in respect of matters in or concerning Burma, will, subject to the reservations specified below be instituted by or against the Government of Burma.

64. *Arrangements will be made for the determination of an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act and provision will be made in the Act to give statutory effect to such determination and to such agreements as may be made thereunder by the respective Governments of the two countries*

The proposals contained in paragraphs 133 and 134 of the Indian White Paper will if adopted have the effect of maintaining as against the Secretary of State for India remedies which before the Act might have been enforced against the Secretary of State in Council both as regards matters arising in India and matters arising in Burma Provision will therefore be made in the distribution of assets and liabilities referred to above for the determination as between the revenues of India and of Burma of the ultimate liability in respect of such matters and the Secretary of State will be given power to secure the implementing of any judgment or award against him in respect of a matter arising in Burma

131 65 *Subject to the agreed distribution provided for in the preceding paragraph all property in Burma which immediately before the date of the coming into force of the Constitution Act was vested in His Majesty for the purposes of the government of India will be vested in His Majesty for the purposes of the government of Burma*

132 66. Existing powers of the Secretary of State in Council in relation to property allocated under paragraph 64 and in relation to the acquisition of property and the making of contracts will be transferred to and become powers of the Governor All contracts, etc. made under the powers so transferred will be expressed to be made by the Governor and may be executed and made in such manner and by such person as he may direct, but no personal liability will be incurred by any person making or executing such a contract.

133 67 The Secretary of State will be substituted for the Secretary of State in Council in any proceedings instituted before the commencement of the Act by or against the Secretary of State in Council.

Statutory Railway Board.

68. Provision will be made for vesting the management of the railways in Burma in a Statutory Railway Board constituted on lines analogous to those of the corresponding body to be set up in India

Borrowing Powers

69. The Government of Burma will have power to borrow for any of the purposes of the government of Burma upon the security of the revenues of Burma within such limits as may from time to time be fixed by law **146**

70. Arrangements will require to be made to secure that Burma sterling loans shall be eligible for Trustee status on appropriate conditions **147**

General

71. Provision will be made securing that the revenues of Burma shall be applied for the purposes of the government of Burma alone. **150**

THE HIGH COURT.

72. The existing High Court established by Letters Patent will be maintained. **168**

73 The Judges of the High Court will continue to be appointed by His Majesty and will hold office during good behaviour The tenure of office of any Judge will cease on his attaining the age of 62 years, and any Judge may resign his office to the Governor **169**

74. The qualifications for appointment as Chief Justice or Judge will remain as at present, except that any person qualified to be a Judge will be eligible for appointment as Chief Justice, and that the existing provision, which requires that one-third of the Judges must be barristers or members of the Faculty of Advocates in Scotland and that one-third must be members of the Indian Civil Service, will be abrogated **170**

75. The salaries, pensions, leave and other allowances of Judges of the High Court will be regulated by Order in Council But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to this disadvantage during his tenure of office. **171**

76. The power to appoint temporary additional Judges and to fill temporary vacancies in the High Court will be vested in the Governor in his discretion **172**

77. Subject to any provision which may be made by the Legislature the High Court will have the jurisdiction, powers and authority vested in it at the time of the commencement of the Constitution Act **173**

78. The Legislature will have power to regulate the powers of superintendence exercised by the High Court over subordinate Courts **175**

79. *As regards appeals to the King in Council, subject always to the right of His Majesty to grant special leave, existing rights of appeal will be preserved, and in addition an appeal will lie without leave from the High Court to the Privy Council in any matter involving the interpretation of the Constitution Act*

THE SECRETARY OF STATE'S ADVISERS.

80. The Secretary of State will be empowered to appoint *two persons* (*of whom one must have held office for at least* 10 *years under the Crown in Burma*) for the purpose of advising him **176**

177 81 Any person so appointed will hold office for a term of five years will not be eligible for reappointment and will not be capable while holding his appointment of sitting or voting in Parliament.

178 82. The salary of the Secretary of State s advisers will be £ a year to be defrayed from monies provided by Parliament.

179 83. The Secretary of State will determine the matters upon which he will consult his advisers and will be at liberty to seek their advice either individually or together on any matter But so long as a Secretary of State remains the authority charged by the Constitution Act with the control of any members of the Public Services in Burma he will be required to lay before his advisers *sitting jointly with the advisers provision for whose appointment is made in proposal* 176 *of the Indian White Paper* and to obtain the concurrence *of the majority of the body so formed* to any draft of rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service and any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member

THE PUBLIC SERVICES

General

180 84. Every person employed under the Crown in Burma will be given a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of his duty

181 85 Every person employed in a civil capacity under the Crown in Burma will hold office during His Majesty's pleasure but he will not be liable to dismissal by any authority subordinate to the authority to whom he was appointed or to dismissal or reduction without being given formal notice of any charge made against him and an opportunity of defending himself unless he has been convicted in a criminal Court or has absconded

(a) *Persons appointed by the Secretary of State in Council before the commencement of the Constitution Act and persons to be appointed by the Secretary of State thereafter*

182 86. Every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that date or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded

A summary of the principal existing service rights of persons appointed by the Secretary of State in Council is set out in Appendix I (Part I) These rights will be in part embodied in the Constitution Act and in part provided for by rules made by the Secretary of State

NOTE —*An appeal lying previously to the Governor-General of India will in future lie directly to the Secretary of State*

183 87 The Secretary of State will after the commencement of the Act make appointments to the Services which will replace the Indian Civil Service and the Indian Police in Burma† and the Ecclesiastical Department. The conditions of service of all persons so appointed, including conditions as to pay and

Persons appointed by the Governor-General or by the Governor General in Council and transferred permanently for service in Burma will be liable to dismissal by the Governor of Burma, and persons appointed by subordinate authorities in India and similarly transferred will be liable to dismissal by authorities in Burma of corresponding status

† See Introduction, paragraph 19

allowances, pensions and discipline and conduct, will be regulated by rules made by the Secretary of State It is intended that these rules shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the Act

88 Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded 184

89. The Secretary of State will be required to make rules regulating the number and character of posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State, and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post for a period longer than three months without the previous sanction of the Secretary of State or save under conditions prescribed by him 185

90 Conditions in regard to pensions and analogous rights will be regulated in accordance with the rules in force at the date of the Constitution Act, and the Secretary of State will have no power to make any amending rules varying any of these conditions so as to affect adversely the pension, etc, of any person appointed before the variation is made An award of pension less than the maximum pension admissible will require the consent of the Secretary of State The pensions of all persons appointed before the commencement of the Constitution Act will be exempt from Burma taxation if the pensioner is residing permanently outside Burma The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Burma taxation if the pensioner is residing permanently outside Burma 186

91. The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council made on an Address of both Houses of Parliament designates another authority for the purpose Any rule made by the Secretary of State will require approval as specified in proposal 83, unless and until both Houses of Parliament by Resolution otherwise determine 187

92. Provision will be made whereby any person appointed by the Crown who is or has been serving in Burma in a civil capacity and any person who, though not appointed by the Secretary of State in Council before the commencement of the Constitution Act or by the Secretary of State after its commencement, holds or has held a post borne on the cadre of the Indian Civil Service may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State in Council or by the Secretary of State, as the Secretary of State may decide to be applicable to his case 188

93 A statement of the vacancies in, and the recruitment made to, the Services and Departments to which the Secretary of State will appoint after the commencement of the Constitution Act will be laid annually before both Houses of Parliament 189

A statutory enquiry will be held into the question of future recruitment to the Services which will replace the Indian Civil Service and the Indian Police after a period to be determined * The decision on the results of this

* See paragraph 19 of Introduction

enquiry with which the Government of Burma will be associated will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament.

(b) *Persons appointed or to be appointed otherwise than by the Secretary of State in Council or the Secretary of State*

190 94. The Government of Burma will appoint and, subject to the following paragraphs, determine the conditions of service of all persons in the service of Government other than persons appointed by the Crown, by the Secretary of State in Council by the Secretary of State *or by the Governor in discharge of the responsibility imposed upon him under the proposals contained in paragraph* 10

95 *Provision will be made for the compulsory transfer to the service of the Government of Burma of persons recruited by the Government of India‡ before the commencement of the Constitution Act for service in Burma alone*

191 96. Every person in the Service of the Government of Burma at the commencement of the Constitution Act, *and all persons in the service of the Government of India at the date of commencement of the Burma Constitution Act and transferred thereafter to that of the Government of Burma* will continue to enjoy all service rights they enjoyed at the date of such transfer A summary of the principal existing rights is set out in Appendix I (Part II)

Note.—*In the case of persons transferred from the service of the Government of India to that of the Government of Burma appeals will in future lie only to the appropriate authority in Burma*

192 97 No person appointed by an authority other than the Secretary of State in Council who was serving in Burma in a civil capacity before the commencement of the Constitution Act, *and no person in the service of the Government of India at the date of the commencement of that Act and transferred thereafter to service in Burma* will have his conditions of service in respect of pay allowances pension or any other matter adversely affected, save by an authority in Burma competent to pass such an order on the 8th March 1926 or with the sanction of such authority as the Secretary of State may direct.

193 98. No rule or order of the Government of Burma affecting emoluments, pensions provident funds or gratuities and no order upon a memorial will be made or passed to the disadvantage of an officer appointed to a Central Service Class I or Class II or to a Burma Provincial Service, before the commencement of the Act, without the personal concurrence of the Governor No post in a Service which replaces a Central Service Class I or Class II or in any Service replacing a Provincial Service shall be brought under reduction if such reduction would adversely affect any person who at the commencement of the Constitution Act, was a member of those Services without the sanction of the Governor or in the case of any person appointed by the Crown or by the Secretary of State in Council of the Secretary of State

194 99 Every person, whether appointed before or after the commencement of the Constitution Act, who is serving in a civil capacity in a whole-time permanent appointment, will be entitled to one appeal against any order of censure or punishment, or against any order affecting adversely any condition of service pay allowances or pension, or any contract of service other than an Order made by the Government in the case of officers serving under its control.

‡ See paragraph 21 of Introduction

(c) *Public Service Commission*

100. There will be a Public Service Commission for Burma The members of the Public Service Commission will be appointed by the Governor, who will also determine at his discretion their number, tenure of office, and conditions of service, including pay, allowances, and pensions, if any The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in Burma The eligibility of the other members for further employment under the Crown in Burma will be subject to regulations made by the Governor 197

101. The emoluments of the members of the Public Service Commission will not be subject to the vote of the Legislature 198

102. The Public Service Commission will conduct all competitive examinations held in Burma for appointments to the Government service The Government will be required to consult it on all matters relating to methods of recruitment, on appointments by selection, on promotions, and on transfers from one service to another, and the Commission will advise as to the suitability of candidates for such appointments, promotions or transfers 199

103. The Government will also be required, subject to such exceptions (if any) as may be specified in regulations to be made by the Secretary of State or Governor, as the case may be, to consult the Public Service Commission in connection with all disciplinary orders (other than an order for suspension) affecting persons in the public services in cases which are submitted to the Government for orders in the exercise of its original or appellate powers, in connection with any claim by an officer that Government should bear the costs of his defence in legal proceedings against him in respect of acts done in his official capacity, *in connection with any claim by an officer that he has suffered loss of rights existing at the date of his transfer to service under the Burma Government*, and in connection with any other class of case specified by regulations made from time to time by the Secretary of State or Governor as the case may be But no regulations made by the Governor will be able to confer powers on the Commission in relation to any person appointed by the Secretary of State without the assent of the Secretary of State 200

104 The Government will be empowered to refer to the Commission for advice any case, petition, or memorial if they think fit to do so, and the Secretary of State will be empowered to refer to the Commission any matter relating to persons appointed by him on which he may desire to have the opinion of the Commission 201

APPENDIX I.

(PART I.)

List of principal existing Rights of Officers appointed by the Secretary of State in Council

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act

1 Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1))

2 Right to be heard in defence before an order of dismissal removal or reduction is passed (Classification Rule 55)

3 Guarantee to persons appointed before the commencement of the Government of India Act, 1919 of existing and accruing rights or compensation in lieu thereof (Section 96B (2))

4 Regulation of conditions of service pay and allowances including Burma allowance and discipline and conduct, by the Secretary of State in Council (Section 96B (2))

5 Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable notwithstanding any rules made under Section 96B (Section 96B (5))

6 Non-votability of salaries pensions and payments on appeal (Sections 67A (3) (iii) and (iv) and 72D (3) (iv) and (v))

7 The requirement that rules under Part VII–A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (Section 96E)

8. Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act 1919 (Section 96B (3))

9 —(i) Reservation of certain posts to members of the Indian Civil Service (Section 98)

(ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State in Council (Section 99) or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council (Section 100)

10 Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or Local Government (Classification Rules 24 and 10)

11 Provision that posts borne on the cadre of All India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council (Classification Rule 25)

12 Appointment of anyone who is not a member of an All India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council (Classification Rule 27)

13 Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service Class I which would adversely affect any officer appointed by the Secretary of State in Council, to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March 1926 or to the creation of any Specialist Post which would adversely affect any member of an All-India Service, the Indian Ecclesiastical Establishment, and the Indian Political Department. (Provisos to Classification Rules 32 40 and 42)

14 Personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an officer of an All-India Service (Devolution Rule 10)

15. Personal concurrence of the Governor required to an order of posting of an officer of an All-India Service (Devolution Rule 10)

16. Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (Section 96B (1))

17 Right of appeal to the Secretary of State in Council, (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification Rules 56, 57 and 58)

18 Right of certain officers to retire under the regulations for premature retirement

(PART II.

List of principal existing Rights of Persons appointed by Authority other than the Secretary of State in Council

NOTE —In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1))
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed, subject to certain exceptions (Classification Rule 55)
3 Regulation of the strength and conditions of service of the Central Services, class I and class II, by the Governor-General in Council and of Provincial Services by Local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March 1926 should be made without the previous sanction of the Governor-General in Council (Classification Rules 32, 33, 36, 37, 40 and 41)
4 Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10)
5 Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services the right of one appeal against an order imposing a penalty (Classification Rules 56, 57, 58 and 54)

(PART III)

NON-VOTABLE SALARIES, &c (CIVIL)

The salaries and pensions of the following classes of persons are non-votable —

(*a*) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter,

(b) persons appointed before the first day of April 1924 by the Governor General in Council or by a Local Government to Services and posts classified as superior

(c) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service

(d) members of the Public Service Commission

(e) holders in a substantive capacity before the commencement of the Constitution Act of posts in an Indian Central Service

The following sums payable to such persons fall also under item (v) of paragraph 47 namely :—

Sums payable to or to the dependants of a person who is or has been in the service of the Crown in Burma under any Order made by the Secretary of State in Council by a Secretary of State by the Governor-General in Council, or by the Governor of Burma upon an appeal preferred to him in pursuance of Rules made under the Constitution Act.

For the purposes of the proposals in this Appendix the expression salaries and pensions will be defined as including remuneration allowances gratuities contributions whether by way of interest or otherwise out of the revenues of Burma to any Provident Fund or Family Pension Fund and any other payments or emoluments payable to or on account of a person in respect of his office

APPENDIX II

(See paragraph 18 of Introduction.)

PROVISIONAL LIST OF AREAS TO BE INCLUDED IN SCHEDULE A AND SCHEDULE B TO THE CONSTITUTION ACT

Schedule A

District	Area
1 Federated Shan States	Northern Shan States. Southern Shan States
2 Arakan Hill Tracts	Arakan Hill Tracts (late Hill District of Arakan)
3 Chin Hills	Chin Hills (including the Pakôkku Hill Tracts)
4 Myitkyina	Myitkyina Kachin Hill Tracts Mogaung Kachin Hill Tracts Kamaing Kachin Hill Tracts Sadôn Kachin Hill Tracts Htawgaw Kachin Hill Tracts Putao Sub-Division (late Putao District)
5 Bhamo	Sinlum Kachin Hill Tracts Shwegu Kachin Hill Tracts
6 Upper Chindwin	Somra Tract. Kanti State Thaungdut State
7 Katha	Katha Kachin Hill Tracts

Schedule B

District	Area
1 Myitkyina	Other than the Hill Tracts specified in item 4 of Schedule A.
2 Bhamo	Exclusive of the Hill Tracts specified in item 5 of Schedule A.
3 Upper Chindwin	Homalin Sub-division and the Tamu Township of the Mawlaik.
4 Salween	

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